

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 452.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, ET AL., APPELLANTS,

vs.

MERCHANTS AND MANUFACTURERS TRAFFIC ASSOCIATION OF SACRAMENTO ET AL. •

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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1 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION OF Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, Atchison, Topeka & Santa Fe Railway Company Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company, respondents.

Petition for injunction and cancellation of order.

To the judges of the above court:

The Merchants' and Manufacturers' Traffic Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, and Stockton Traffic Bureau, duly organized and existing associations of their respective cities as above mentioned, and the city of Santa Clara, a municipal corporation and body politic of the State of California, bring this petition against the United States of America, Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company, and thereupon complain and say:

I.

The Merchants' and Manufacturers' Traffic Association of Sacramento is a duly organized association with its headquarters and address at the city of Sacramento, State of California. The Stockton Traffic Bureau is a duly organized association with its headquarters and address at the city of Stockton, State of California. The Traffic Bureau of San Jose Chamber of Commerce is a duly organized association with its headquarters and address at the city of San Jose, State of California. That each of said associations is composed of a large membership comprising the principal merchants, mercantile firms, manufacturing concerns, wholesale companies, business men, and dealers in their respective communities, and the object of each of said associations are, among other things, to foster and encourage commerce, to promote the welfare of the community, to induce manufacturers and business concerns to locate in their respective communities, to secure the expansion of trade, manufacture, and commerce, and especially to secure better railroad rates

and facilities to the said cities of Sacramento, Stockton, and San Jose.

II.

The city of Santa Clara is a duly organized and existing body politic, to wit, a municipal corporation, the residents and tax payers of which are engaged in varied lines of industry, including wholesale trade and manufacture, and are directly and financially interested in the shipment of commodities to said city and in the amount of the railroad charge therefor, and said city and the residents and tax payers thereof are desirous of securing better railroad facilities and rates to said community.

III.

The Atchison, Topeka & Santa Fe Railway Company now is and for a number of years last past has been a corporation duly organized and existing under the laws of the State of Kansas. It now is and for a number of years last past has been operating lines of railroad from points in the States of Illinois, Iowa, Missouri, Kansas, Oklahoma, Colorado, Texas, New Mexico, and Arizona to and into various cities and towns in the State of California with lines extending or connecting with lines extending to other parts in said State, including the cities of San Jose, Santa Clara, Sacramento, and Stockton, and the other cities, towns, or points named as California terminals in Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, and supplements thereto, on file with the Interstate Commerce Commission, to which tariffs and supplements reference is hereby specially made and the same are made a part hereof by reference. Said railway company now is and for a number of years last past has been engaged in the transportation of freight and passengers between various points on its lines of railroad and between points in different States of the United States as a common carrier, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof or supplemental thereto.

IV.

The Chicago, Rock Island & Pacific Railway Company now is and for a number of years last past has been a corporation duly organized and existing under the laws of the State of Illinois; it now is and for a number of years last past has been operating lines of railroad between points in the State of Colorado and points in the States of Kansas, Iowa, Missouri, Illinois, and other States of the United States, and connects with other lines of railroad, which, with connections, are and have been engaged in the transportation of freight and passengers from the points before mentioned to various points in the State of California, includ-

ing San Jose, Santa Clara, Sacramento, and Stockton, and the other cities, towns, or points named as California terminals in the aforesaid Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, and supplements thereto, on file with the Interstate Commerce Commission. That in the transportation of freight and passengers between the points above referred to said railroad company has acted as a common carrier, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof and supplemental thereto.

V.

The Denver & Rio Grande Railroad Company now is and for a number of years last past has been a corporation duly organized and existing under the laws of the State of Colorado; it now is and for a number of years last past has been operating lines of railroad between points in the State of Colorado and points in the State of Utah and other States of the United States, and connects with other lines of railroad, which, with connection, are and have been engaged in the transportation of freight and passengers from the points before mentioned to various points in the State of California, including San Jose, Santa Clara, Sacramento, and Stockton, and the other cities, towns, or points named as California terminals in the aforesaid Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, and supplements thereto, on file with the Interstate Commerce Commission. That in the transportation of freight and passengers between the points above referred to said railroad company has acted as a common carrier, and as such
5 common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof or supplemental thereto.

VI.

The Southern Pacific Company now is and for a number of years last past has been a corporation duly organized and existing under the laws of the State of Kentucky; it now is and for a number of years last past has been operating lines of railroad in connection with other railroads from points in the States of Texas, New Mexico, Arizona, Utah, and other States of the United States and various points in the State of California, including San Jose, Santa Clara, Sacramento, Stockton, and the other cities, towns, or points named as California terminals in the aforesaid Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, and supplements thereto, on file with the Interstate Commerce Commission. That in the transportation of freight and passengers between the points above referred to said railroad company has acted as a common carrier, and as such common carrier is subject to the provisions

of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof or supplemental thereto.

VII.

The Union Pacific Railroad Company now is and for a number of years last past has been a corporation duly organized and existing under the laws of the State of Utah; it now is and for a number of years last past has been operating lines of railroad from points in the States of Nebraska, Kansas, Colorado, and other States of the United States to points in the State of Utah as a common carrier, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof or supplemental thereto.

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VIII.

The Western Pacific Railroad Company now is and for a number of years last past has been a corporation duly organized and existing under the laws of the State of California; it now is and for a number of years last past has been operating lines of railroad from points in the State of California and in connection with other lines of railroad herein mentioned has been engaged in the transportation of freight and passengers from points in the other States of the United States before mentioned to points in the State of California, including San Jose, Santa Clara, Sacramento, Stockton, and the other cities, towns, or points named as California terminals in the aforesaid Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, and supplements thereto, on file with the Interstate Commerce Commission. That in the transportation of freight and passengers between the points above referred to said railroad company has acted as a common carrier, and as such common carrier is subject to the provisions of the act to regulate commerce, approved February 4, 1887, and the acts amendatory thereof or supplemental thereto.

IX.

The Chicago, Rock Island & Pacific Railway Company connects with the Union Pacific Railroad Company and the Denver & Rio Grande Railway Company, which last-named companies connect with the Southern Pacific Company and the Western Pacific Railway Company and form through lines of transportation for freight and passengers from Missouri River points to various points in the State of California, including San Jose, Santa Clara, Sacramento, Stockton, and the hereinbefore referred to California terminals.

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X.

Petitioners are informed and believe, and upon such information and belief allege, that the above-named railroad companies have

mutually established through joint rates for the carriage by rail of persons and property to various points within the State of California, including San Jose, Santa Clara, Sacramento, and Stockton, and the other cities, towns, or points named as California terminals in the aforesaid Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, and supplements thereto, from points in the States of Nevada, Utah, Wyoming, Colorado, Arizona, New Mexico, Texas, Oklahoma, Louisiana, Mississippi, Arkansas, Missouri, Kansas, Nebraska, Iowa, Illinois, and other States of the United States, including Missouri River points and points on the Atlantic seaboard, and are participating carriers in the transportation of persons and property as aforesaid.

XI.

The cities of San Jose, Santa Clara, Sacramento, and Stockton, California, for a number of years last past have been designated as California terminals, and were so designated in Trans-Continental Freight Bureau West-Bound Tariffs Nos. 1-L, 1-M, and 1-N, which last-named tariff is effective at this date, as well as in preceding tariffs, and as such terminal points are now enjoying and have heretofore enjoyed terminal rates upon transcontinental westbound freight, and will continue to enjoy such terminal rates until July 15, 1915, and would thereafter continue to enjoy such terminal rates except for the order of the Interstate Commerce Commission and the withdrawal of said terminal rates from said cities of San Jose, Santa Clara, Sacramento, and Stockton by the defendant railroad carriers, pursuant to such order of the Interstate Commerce Commission as hereinafter set forth. A copy of said order of the Interstate Commerce Commission, dated April 29, 1915, is attached to this petition, marked "Exhibit B," and is herein specially referred to and made a part hereof. A copy of the findings and decision of the Interstate Commerce Commission pursuant to which the said order was made is attached to this petition, marked "Exhibit A," and is herein specially referred to and made a part hereof.

XII.

The city of Sacramento has a population of over 60,000. It is located upon the main lines of the Southern Pacific Company and the Western Pacific Company, both transcontinental carriers, and is also reached by joint through lines via the Atchison, Topeka & Santa Fe Railway, in connection with the Central California Traction Company via Stockton, California, and the Oakland, Antioch & Eastern Railway via Bay Point, California. Sacramento is located upon the Sacramento River, a navigable waterway, and deep-draught ocean-going vessels, with full cargoes, have docked within the limits of said city. The Sacramento River is navigable for deep-water vessels during the greater portion of the year and

four regular lines of steamers now operate between San Francisco and Sacramento, two of said steamer lines operating daily, one line triweekly, and the other semimonthly.

XIII.

The city of Stockton has a population of over 42,000. It is located on the main lines of the Southern Pacific Company, the Western Pacific Railway Company, and the Atchison, Topeka & Santa Fe Railway Company, all of which are transcontinental rail carriers. Stockton is also located upon the San Joaquin River, a navigable waterway accessible to deep-draught vessels during the greater portion of the year and upon which two regular lines of steamers
9 ply daily throughout the year between said city of Stockton and San Francisco.

The Government of the United States also maintains a channel leading from the San Joaquin River to the center of the city of Stockton to a depth from November to August of 14 feet and at no time of less than 9½ feet.

XIV.

The cities of San Jose and Santa Clara are adjoining and have a combined population of over 43,000. They are both located on the main line of the Southern Pacific Company from all eastern points via Los Angeles to San Francisco and Oakland; also on the main line of the Southern Pacific Company from eastern points and Utah via Niles to San Francisco.

San Jose and Santa Clara are both important manufacturing and jobbing centers, and there is shipped to such points each year from Missouri River points and other points further east a vast amount of freight, from which the Southern Pacific Company enjoys a large revenue.

The city limits of San Jose extend to the town of Alviso, herein-after mentioned, and to deep water on San Francisco Bay, at which point the Government has caused a survey to be made and the Army engineers in charge of such work have recommended extensive improvements for deep-water shipping. The State of California has created a board of harbor commissioners to the port of San Jose, which commission has been appointed and is now attending to the duties of its office.

XV.

The town of Alviso lies at the southern end of San Francisco Bay, on deep tide water, accessible at all times of the year to boats of deep draught. The commercial center of Santa Clara is about four miles south of Alviso, and the commercial center of San Jose is about six miles to the south, and there is between all of said points direct

10 communication by rail and by an extremely good and level wagon road.

Freight from the eastern seaboard has been brought to the Pacific coast by boat destined for San Jose and Santa Clara, and the same has been and now is being landed at Alviso, from which point it is hauled by dray or motor truck direct to the consumer. San Jose and Santa Clara are distributing centers, distributing to points adjacent to and north of Alviso, points more accessible from Alviso than from San Jose or Santa Clara. The merchants of San Jose and Santa Clara for more than half a century past have maintained warehouses at Alviso, from which they have and do distribute direct to the door of the consumer, thus reducing further transportation charges. The drayage from Alviso to the consumer in San Jose and Santa Clara has always been and still is considered a part of the carriage by water and the cost thereof borne by the water carrier.

XVI.

San Jose, Santa Clara, Sacramento, and Stockton historically were and now are entitled to terminal rates, and an increase thereof would be unjust and unreasonable. Terminal rates were extended by the rail carriers to the cities mentioned because of the controlling competition with water carriers and for no other reason, and no changed conditions or other conditions have since arisen as a cause why such rates should be increased, and the four cities mentioned and the complainants herein would suffer irreparable damage and injury if the terminal rates thereto should be withdrawn. Freight from the eastern portion of the United States was transported by ocean carriers around the Horn or across the Isthmus of Panama, and such freight was landed within the limits of the cities above named by the water carriers long before the advent of the railroads in California.

11 It was this controlling water competition that caused the rail carriers to extend terminal rates to the four cities mentioned.

XVII.

A vast volume of transcontinental westbound freight is shipped daily into San Jose, Santa Clara, Sacramento, and Stockton, in value amounting to millions of dollars per year. Large and extensive industries have located at the cities mentioned because of settled conditions and the fact that said points had terminal rates. The growth and prosperity of said communities have been built up and are dependent upon such terminal rates. The cities mentioned are manufacturing and distributing centers and come into active competition with the other cities in California, especially with San Francisco and Oakland. The local rate from San Francisco to Sacramento is graded on a scale of 24¢ per hundred pounds, to Stockton formerly on the scale of 10¢ but with a scale of 18¢ now authorized, and to San Jose and Santa Clara on a scale of 7¢. If the ter-

terminal rates are taken from the cities mentioned, then the dealers therein would be compelled to pay the local back haul from San Francisco (less 25% of the same in some instances as hereinafter mentioned), which would amount to several hundred thousand dollars per year. Further, this additional cost would leave the dealers and manufacturers in the cities mentioned unable to meet the competition from San Francisco and Oakland, and such increase in the freight rates would be and is unreasonable, unjust, and unduly discriminatory as to San Francisco and Oakland, and such increase in freight rates would be confiscatory of large and extensive wholesale, manufacturing, and other industries in San Jose, Santa Clara, Sacramento, and Stockton, and would cause them irreparable damage and injury.

XVIII.

12 The rail carriers, because of competition with water routes and water carriers as aforesaid, reduced the rate on the carriage of westbound transcontinental freight to San Jose, Santa Clara, Sacramento, and Stockton, and extended terminal rates to such points on such freight because of the aforesaid water competition, which said competition always has and now does exist.

No changed conditions now exist or at any time have existed to cause the rail carriers to withdraw terminal rates from the four cities mentioned, or to increase the rates to said points, and complainants aver that an increase of rates by the rail carriers to the four cities mentioned will be contrary to the provisions of section 4 of the act to regulate commerce.

XIX.

The Santa Rosa Traffic Association, of Santa Rosa, California, filed a complaint before the Interstate Commerce Commission alleging discrimination as to some eleven points designated as California terminals and, after a hearing had in said matter, the Interstate Commerce Commission, on the 5th day of January, 1914, made its order requiring the rail carriers to cease and desist, on or before April 1, 1914, and for a period of not less than two years thereafter, or as long as terminal rates should be extended to San Jose and Santa Clara, to abstain from charging, demanding, collecting, or receiving contemporaneously any greater rate or rates for the transportation of westbound transcontinental freight to Santa Rosa, California, than they charged for the transportation of west-bound transcontinental freight to San Jose and Santa Clara. The cities of Sacramento and Stockton were not mentioned either in the petition of Santa Rosa or in the order of the Interstate Commerce Commission. The aforesaid order was by the said commission from time to time suspended and is not as yet in effect.

13 By the aforesaid order the rail carriers were required to file tariffs thirty days prior to April 1, 1914, and to establish,

maintain, and apply to the transportation of westbound transcontinental freight to Santa Rosa, California, rates not higher than those contemporaneously charged for the transportation of like freight from the same points of origin to San Jose and Santa Clara. Under the aforesaid order the rail carriers were not directed to increase the freight rates to San Jose and Santa Clara, but were ordered to remove the alleged discrimination. Exercising their option, the rail carriers, prior to the suspension of the above-mentioned order, filed tariffs whereby the rates to San Jose and Santa Clara were increased on westbound transcontinental freight to the extent of the local haul back from San Francisco, which is graded on a 7¢ per hundred-pound scale. San Jose and Santa Clara protested against said increase in freight rates and a hearing was had as to the propriety of such increase, and the lawfulness of the rates, charges, regulations, and practices set forth in said tariffs was investigated. In said matter the Interstate Commerce Commission, on the 29th day of December, 1914, ordered the cancellation of the aforesaid tariffs which increased the freight charges to San Jose and Santa Clara. The tariffs mentioned are set forth in the order of the commission, which is in the words and figures following, to wit:

“Order.

“At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 29th day of December, A. D. 1914.

“Investigation and Suspension Docket No. 405. Transcontinental commodity rates to San Jose, Santa Clara, and Marysville, Cal.

14 “SAN JOSE CHAMBER OF COMMERCE ET AL.

v.

“THE ATCHISON, TOPEKA & SANTA FE RAILWAY
Company et al.

No. 6717.

“It appearing that on March 16, 1914, the commission entered upon an investigation concerning the propriety of the increase and the lawfulness of certain rates, charges, regulations, and practices stated in schedules designated as follows: R. H. Countiss, agent, supplement No. 26 to I. C. C. No. 952, supplement No. 17 to I. C. C. No. 956, supplement No. 3 to I. C. C. No. 974, supplement to No. 7 to I. C. C. No. 975, supplement to No. 5 to I. C. C. No. 976, supplement No. 5 to I. C. C. No. 978, I. C. C. No. 989; C. C. McCain, agent, supplement No. 26 to I. C. C. No. 6, I. C. C. No. 14; Eugene Morris, agent, supplement No. 26 to I. C. C. No. 344, I. C. C. No. 465, and subsequently ordered that the operation of certain parts of said schedules be suspended until January 30, 1915;

“It further appearing that a full investigation of the matters and things involved has been had, and that the commission, on the date

hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

"It is ordered that the carriers respondent herein and designated in said schedule be, and they are hereby, notified and required to cancel, on or before January 30, 1915, the rates and charges stated in the items of the schedules specified in said orders of suspension.

"By the commission.

"[SEAL.]

GEORGE B. MCGINTY,

"Secretary."

15

XX.

Because of a complaint filed by the Railroad Commission of Nevada, the Interstate Commerce Commission heretofore entered upon an investigation of west-bound freight charges to the intermountain country. In its decision in the Intermountain cases (so-called), the commission determined that the rates in effect, terminal and intermediate, were reasonable in themselves; and in those cases the situation of San Jose as a terminal point and as being entitled to terminal rates was considered and accepted as proper. See 19 I. C. C. 238, at page 240; 21 I. C. C. 329, at pages 343, 344.

Sacramento and Stockton were likewise accepted and considered as proper terminals.

XXI.

Following the decision and order in the Intermountain cases, the rail carriers petitioned the Interstate Commerce Commission for permission to file new tariffs wherein lower rates would be charged on certain transcontinental westbound commodities especially designated in said petition. A hearing of said matter was had in Chicago beginning October 6, 1914. No notice of said hearing was given to any of the four cities above mentioned or to any of the mercantile concerns or associations therein, nor were any of them brought in or made parties to said proceeding. Following said hearing, the Interstate Commerce Commission, on the 29th day of January, 1915, made its order wherein it granted the rail carriers the right to charge lower rates on certain westbound transcontinental freight to Pacific coast terminals and to continue higher rates to intermediate points, the rates to Pacific coast terminals from the Missouri River and all points east thereof to be the same, but to intermediate

16 diate points the carriers were allowed to charge based upon the Missouri River, an additional charge from Chicago points a further additional charge from points on the Atlantic seaboard. It was further ordered that the Pacific coast terminals in California, in so far as that order was concerned, should consist of San Diego, Wilmington, East Wilmington, San Pedro, San Francisco, and Oakland, California, only. Said order is in the following

words and figures, except that a summary is given of certain boundaries for the sake of brevity and convenience, viz:

"Order.

"At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 29th day of January, A. D. 1915.

"Amended fourth section order No. 124. In the matter of applications Nos. 205, 342, 343, 344, 349, 350, and 352, on behalf of carriers parties to the tariffs therein named, by R. H. Countiss, C. W. Bullen, and J. F. Tucker, their agents, for relief from the provisions of the fourth section of the act to regulate commerce, as amended June 18, 1910, with respect to commodity rates from eastern points or shipment which are higher to intermediate points than to Pacific coast terminals.

"Commodity rates.

"A public hearing having been held with reference to the justification for the additional relief sought by the carriers respecting the rates on the commodities listed under schedule C, and full investigation of the matters and things involved having been had, and the commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

17 "It is ordered, That, effective May 1, 1915, Fourth Section Order No. 124, amendments thereof and supplements thereto be, and they are hereby, amended to read as follows:

"It is ordered, That for the purpose of disposing of these applications the United States shall be divided into five zones, known as zones 1, 2, 3, 4, and 5. On traffic to California terminals, zone 1 shall include all that territory of the United States lying west of the following line: (This line may be summarized by saying that it is a boundary of Missouri River points.)

"On traffic to California terminals, zone 2 shall include all that territory lying east of line (a) above described and west of a line called line (c), which begins at the international boundary between the United States and Canada immediately west of Cockburn Island in Lake Huron; passes westerly through the Straits of Mackinaw; southerly through Lake Michigan to its southern boundary; follows the west boundary of transcontinental group C to Paducah, Ky.; thence follows the east side of the Illinois Central Railroad to its intersection with the south boundary of group C; thence follows the east boundary of group C to the Gulf of Mexico.

"On traffic to the north coast terminls, zone 2 shall include all territory lying between lines (b) and (c).

"Zone 3 includes all territory in the United States lying east of line (c) and north of the south boundary of transcontinental group

C and on and west of line (d), which is the Buffalo-Pittsburgh line from Buffalo, N. Y., to Wheeling, W. Va., marking the western boundary of trunk-line freight association territory; thence follows the Ohio River to Huntington, W. Va.

"Zone 4 includes all territory in the United States east of line (d) and north of the south boundary of transcontinental group C.

"Zone 5 includes all that territory in the United States
18 south and east of transcontinental group C.

"It is further ordered, That those portions of the above-numbered applications that requested authority to maintain higher commodity rates, except upon commodities as hereinafter specified, from points in zone 1 to intermediate points than to Pacific coast terminals be, and the same are hereby, denied, effective May 1, 1915.

"It is further ordered, That the petitioners herein be, and they are hereby, authorized to establish and maintain commodity rates from all points in zones 2, 3, and 4, as above defined, to points intermediate to Pacific coast terminals that are higher to intermediate points than to Pacific coast terminals, provided that on and after May 1, 1915, except as hereinafter specified, the rates to intermediate points from points in zones 2, 3, and 4 shall not exceed the rates on the same commodities from the same points of origin to the Pacific coast terminals by more than 7 per cent from points in zone 2, 15 per cent from points in zone 3, and 25 per cent from points in zone 4.

"It is further ordered, That the petitioners herein be, and they are hereby, authorized to established the carload rates proposed in their application, as shown in the appendix to this report, on the following commodities: Calcium chloride, No. 485; iron and steel articles, No. 20304; iron and steel articles, Nos. 2065, 2335, 2340; billets, blooms, ingots, etc., No. 2075-A; bolts, nuts washers, etc., No. 2110; nails and spikes, No. 2245-C; pipe fittings and connections, No. 2260-A; cast-iron pipe and connections, No. 2265; wrought-iron pipe, No. 2270-A; cast-iron pipe and connections (new number); iron and steel articles, Nos. 2080 and 2085; box straps, shingle bands, baling ties, Nos. 2115, 2370-B, and 2430-B; shoes, horse, mule, and oxen, No. 2375; tubing, open seam, n. o. s., No. 2445; strawboard, n. o. s., No. 3325; ship and boat spikes, No. 3960; soda ash, No.
19 4045-A; tin and terne plate, No. 4375-A; wire and wire goods, No. 4780-B; wire, iron, plain, galvanized, etc., No. 4795-D; wire rods, No. 4825; zinc spelter, No. 4885; steel rails, No. 1340; rail fastenings, No. 1341, from points in zone 1 to Pacific coast terminals which are lower than the rates on like traffic to intermediate points, provided that on and after May 1, 1915, the rates to intermediate points in no instance exceed 75 cents per 100 pounds.

"It is further ordered that petitioners herein be, and they are hereby, authorized to establish or continue the carload rates proposed in their application for additional relief as shown in the appendix to this report on all the commodities listed under schedule C, except rice, window glass, saws, saw plates, stacker ladders, coal, and pig

iron, shown in the appendix to this report as items Nos. 3650, 1695-A, 3845, 3860, 4095, 850, 2255-A, and except also the 27 items concerning which the application for additional relief has been withdrawn from points in zones 2, 3, and 4 to Pacific coast terminals, and to continue higher rates on the same commodities to intermediate points, provided that on and after May 1, 1915, the rates to intermediate points do not exceed the rates from the Missouri River to the same destinations by more than 15, 25, and 35 cents per 100 pounds from points in zones 2, 3, and 4, respectively.

"It is further ordered that the request for additional relief respecting the rates on rice, window glass, saws, saw plates, and stacker ladders, shown as items Nos. 3650, 1695-A, 3845, 3860, and 4095 in the appendix to this report, be, and the same is hereby denied, effective May 1, 1915.

"It is further ordered that the petitioners herein be, and they are hereby, authorized to establish and maintain the rates proposed in their application as shown in the appendix to this report on 20 coal and pig iron to Pacific coast terminals, and to continue higher rates to intermediate points, provided that on and after May 1, 1915, the rates to such intermediate points do not exceed 5 mills per ton-mile.

"It is further ordered that petitioners herein be, and they are hereby, authorized to establish the less-than-carload commodity rates named in their application for additional relief, as shown in the appendix to the report, from points in zone 1 to Pacific coast terminals, and to continue higher rates to intermediate points on all articles listed as first or second class in western classification upon which the rates to the terminals are less than \$1.50 per 100 pounds, and on all articles listed as third or lower class on which the rates to the terminals are less than \$1.25 per 100 pounds, provided that on and after May 1, 1915, the rates to intermediate points on all such first and second class articles do not exceed \$1.50 per 100 pounds, and on all such third and lower class articles \$1.25 per 100 pounds.

"It is further ordered that petitioners herein be, and they are hereby, authorized to establish the less-than-carload commodity rates proposed in their application for additional relief, as shown in the appendix to this report, from points in zones 2, 3, and 4 to Pacific coast terminals, and to continue higher rates to intermediate points, provided that on and after May 1, 1915, the rates to intermediate points do not exceed the rates from the Missouri River to the same destinations by more than 25, 40, and 55 cents per 100 pounds from points in zones 2, 3, and 4, respectively.

"It is further ordered that the degree of deviation herein permitted as between the terminal rates herein approved and the maximum intermediate rates herein authorized shall be the maximum amount by which these petitioners are permitted to depart from the 21 rule of the fourth section, and the disparity between the rates to the terminal points and to intermediate points shall not be widened except under further orders of the commission.

"It is further ordered that in the observance of this order as to the rates on schedule C commodities the Pacific coast terminals shall consist of San Diego, Wilmington, East Wilmington, San Pedro, San Francisco, and Oakland, Cal., Portland, Oreg., Tacoma and Seattle, Wash., only.

"It is further ordered that petitioners herein operating routes from eastern defined territories to points intermediate to Pacific coast terminals so situated as to necessitate the routing of traffic from lower rated through higher rated zones be, and they are hereby, authorized to establish via such routes rates authorized herein on the commodities named in the report and to disregard the long-and-short-haul rule of the fourth section to the extent necessary to permit such routing.

"And it is further ordered that tariffs containing rates revised in accordance with the terms of this order shall be made effective on statutory notice.

"By the commission.

"GEORGE B. MCGINTY,
Secretary."

"[SEAL.]

XXII.

San Jose, Santa Clara, Sacramento, and Stockton were not parties to the proceeding wherein the foregoing order was made, and no evidence was introduced in their behalf or introduced at all on the point as to whether or not the four cities mentioned were 22 entitled to be designated as terminals under said order the same as the points therein designated as terminals, but on the contrary said four cities named were arbitrarily designated as back-haul points. Petitioners further aver that there was no justification for charging a higher rate to the four cities mentioned than to the points mentioned in the aforesaid order as terminals, and that said four cities are surrounded by similar conditions and circumstances as are the terminals mentioned in the order. Petitioners therefore aver that the right to be designated as a California terminal and to receive westbound transcontinental freight at terminal rates was taken from them without evidence, without due process of law, and without right of representation; that petitioners have been denied the equal protection of the law, and that the unjustifiable increase of rates will cause them to suffer irreparable damage and injury.

XXIII.

In the decision of the Interstate Commerce Commission, decided January 29, 1915, 32 I. C. C. 611-658, being the decision upon which the aforesaid order of January 29, 1915, was based, a suggestion was made, voluntary on the part of the commission and not based upon any evidence introduced, as follows:

"We shall expect the carriers within sixty (60) days from date of service hereof to submit to the commission such plans for adjustment of rates to the back-haul points as they may desire; should the car-

riers submit no such plan within this time, the commission will undertake such investigation as to these rates as will enable it to enter a proper order with regard thereto."

23 Following said suggestion the rail carriers, on March 23, 1915, submitted their plan for the additional charge to back-haul territory, as follows:

"The lines leading to California terminals have submitted the following plan for making rates from eastern defined territory to such points:

"Deduct from terminal commodity rates 7 cents per 100 pounds, carloads, and 10 cents per 100 pounds, l. c. l., for basing rates, to which add full local rates from nearest terminal point to destination. This basis to prevail eastward from the terminal point until point is reached where the direct rate is the same or less. In no case shall rate to any back-haul point be less than to the terminal point."

Said matter came on for hearing before the Interstate Commerce Commission on the 12th day of April, 1915, at which time the carriers presented to the commission the above plan for the adjustment of rates to back-haul points which, by the decision of the commission, included San Jose, Santa Clara, Sacramento, and Stockton, and urged upon the commission the adoption of said plan. With the exception of San Francisco and the Railroad Commission of Nevada, no objection to said plan was offered and no other plan was submitted. The objection raised by the Railroad Commission of Nevada was that no higher rate should be charged to any intermountain or intermediate point than was charged to California terminals because of the long-and-short-haul clause in the fourth section of the act to regulate commerce; the objection on the part of San Francisco was that all points other than San Francisco should be charged the full local back. At said hearing neither the cities of San Jose, Santa

24 Clara, Sacramento, and Stockton, nor any of their commercial bodies or associations, were made parties, and no evidence was introduced on any plan other than the plan submitted by the rail carriers as aforesaid. Notwithstanding the same, the Interstate Commerce Commission, by its decision and order handed down on April 30, 1915, 34 I. C. C. 13-20, denied the adjustment proposed by the carriers and arbitrarily fixed the rate.

Said decision of April 30, 1915, is hereunto annexed and marked "Exhibit A," and is herein specially referred to and made a part hereof.

The order in said matter, dated April 30, 1915, is hereunto annexed and marked "Exhibit B," and is herein specially referred to and made a part hereof.

Petitioners submit that this action on the part of the commission is contrary to the views expressed in the opinion dated January 29, 1915, suggesting the submission of a plan by the rail carriers; and further aver that said decision and order, if allowed to stand, will be unjust and discriminatory against receivers and shippers of freight represented by petitioners and will cause them irreparable damage and injury; that said order, Exhibit B attached hereto,

unjustly affects petitioners herein and deprives them of rights without representation and takes from them property without due process of law, denying them the equal protection of the law.

XXIV.

Pursuant to the aforesaid order of the Interstate Commerce Commission of April 30, 1915, Exhibit B hereto attached, the rail carriers, respondents herein, have prepared and filed with the Interstate Commerce Commission tariff schedules Supplement 16, I. C. C. No. 996 of R. H. Countiss, effective July 15, 1915, wherein the four cities herein petitioning will be charged for westbound transcontinental freight coming over the rails of the respondent carriers herein, the

full terminal rate to San Francisco, with an additional charge
25 according to whether the commodity falls under A, B, or C.

If schedule A, the cities herein mentioned will be charged 7% 15%, and 25%, respectively, from Chicago points, Buffalo-Pittsburgh points, and the Atlantic seaboard, in excess of the rate enjoyed by the terminals arbitrarily designated by the Interstate Commerce Commission. As to commodities under schedule B they will be charged an excess over the terminal rate of 15 cents, 25 cents, and 35 cents per 100 pounds on carloads, and 25 cents, 40 cents, and 55 cents per 100 pounds on less than carloads, respectively, from Chicago points, Buffalo-Pittsburgh points, and the Atlantic seaboard, and on articles designated in schedule C they will be charged the terminal rate plus 75% of the local back haul. The local back haul is the maximum excess which can be charged to the petitioning cities, and certain maximums are designated in said order of April 30, 1915. The additional amounts, however, allowed by the commission to be charged on westbound transcontinental freight destined to the four cities herein, will in practically every instance amount to more than the full local back-haul charge, and therefore, under the orders of the commission, San Jose, Santa Clara, Sacramento, and Stockton will be compelled to pay in practically every instance, on commodities mentioned in schedules A and B, the full local back haul from San Francisco, and on commodities mentioned in schedule C, 75% of said back haul.

XXV.

In its findings and decision of January 29, 1915, the Interstate Commerce Commission held that the rail carriers could blanket their rates on west-bound transcontinental freight from the Atlantic seaboard to Missouri River points. Water competition on freight

shipped to the Pacific coast originates along the Atlantic sea-
26 board, and there is no water competition at Buffalo, Pittsburgh, or Chicago. If the rates are based upon water competition, the freight charges from the interior to the Pacific coast should be higher than from points on the Atlantic Ocean. The Interstate Commerce Commission, however, in regard to charging higher rates from interior points, stated as follows:

"That such policy would result also in serious injury to many of the industries located at interior points, which have, under equal rates, built up a large and profitable business on the Pacific coast. Many articles are produced and manufactured both in the interior and on the Atlantic seaboard. Only a certain quantity of these manufactured articles can at present be consumed on the Pacific coast. Any rate adjustment that tends to stimulate the movement of these articles from the Atlantic seaboard will to the same extent decrease the movement from Chicago and other intermediate points. The principal beneficiaries of such an adjustment of rates would be the shippers on or near the Atlantic seaboard to whom would be given a monopoly of many articles in the markets of the Pacific coast. It is clear that the carriers' interest, and the interests of the major part of the public served, lie in the direction of the maintenance of rates from the intermediate points no higher than from the Atlantic coast."

Notwithstanding the foregoing, the Interstate Commerce Commission allowed the rail carriers to blanket their rates as afore-
 27 said from the Atlantic seaboard to the Missouri River in order not to give a monopoly to one point or section of country, to prevent discrimination against interior points, to prevent the disturbing of settled conditions, and to promote the general welfare of the public; yet, on the other hand, the commission arbitrarily ordered San Jose, Santa Clara, Sacramento, and Stockton to be stricken from the list of California terminals and directed the rail carriers to charge a higher rate for a shorter haul to said cities than will be charged to San Francisco and Oakland, thus unjustly discriminating against the four complaining cities, with the result of unsettling business conditions and causing irreparable damage and injury to the business interests of the four cities mentioned.

XXVI.

Petitioners herein aver that the orders authorizing the withdrawal of terminal rates from San Jose, Santa Clara, Sacramento and Stockton, and the rates on westbound transcontinental freight destined to said points, are contrary to law and equity, are discriminatory and unjust, were made without said cities having their day in court or without giving them an opportunity to show the unreasonableness thereof, that no justification for such increase was shown, and the order of April 30, 1915, was without evidence, that petitioners have been denied the equal protection of the law and deprived of property without due process of law, to their irreparable damage and injury. That unless the enforcement of said orders of the Interstate Commerce Commission and the increase on westbound transcontinental freight rates as to San Jose, Santa Clara, Sacramento, and Stockton be stayed by an order of the honorable judges
 28 of this court, great and irreparable injury and damage will result to these petitioners, their business enterprises and industries will be rendered profitless and of no value, and great

and irreparable financial loss incapable of ascertainment will be the result, to the manifest wrong and injury of your petitioners, and that said orders should be vacated and set aside.

Your petitioners therefore pray that upon the filing of this petition a temporary or interlocutory order be entered herein suspending the said orders of January 29, 1915, and April 30, 1915, of the said Interstate Commerce Commission, restraining the enforcement of said orders of the said commission, restraining the defendant railroad companies from charging or collecting the aforesaid increased rates on westbound transcontinental freight, and restraining the said commission and railroad companies named from taking any steps or instituting any proceedings to enforce the said orders or the withdrawal of said terminal rates, and that upon a final hearing of this cause a decree be entered herein setting aside and annulling the said orders of the said Interstate Commerce Commission and perpetually enjoining the enforcement of the said orders and perpetually enjoining the respondents and their agents, servants, and representatives and said railroad companies from enforcing the said orders and from taking any steps or instituting any proceedings for the enforcement of the said orders and from withdrawing terminal rates from San Jose, Santa Clara, Sacramento, and Stockton or increasing the same.

Your petitioners further pray that if any delay intervenes between the filing of this petition and the issuance of a temporary or interlocutory order, as prayed for herein, an order be entered suspending the said orders of the said Interstate Commerce Commission and enjoining the enforcement thereof and the withdrawal of terminal rates from San Jose, Santa Clara, Sacramento, and Stockton or the increasing of the same, until the hearing and final determination of the application for the temporary or interlocutory order as prayed for herein.

And your petitioners further pray that such other and further relief be granted in the premises as justice and equity may require.

Your petitioners further pray that your honors grant unto your petitioners a writ of subpoena of the United States of America, and that due service thereof be made upon the respondents and upon the Interstate Commerce Commission, commanding them at a certain day and under a certain penalty therein to be specified to appear before this court and then and there full, true, and complete answer make to all and singular the premises; but not under oath (an answer under oath being hereby expressly waived), and to stand and abide such order and decree herein as to the court shall seem meet and agreeable to equity and good conscience.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION
OF SACRAMENTO,
TRAFFIC BUREAU OF SAN JOSE CHAMBER OF COMMERCE,
STOCKTON TRAFFIC BUREAU, and
CITY OF SANTA CLARA,
By JOHN E. ALEXANDER,
Solicitor for Petitioners.

30 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

G. J. Bradley, being first duly sworn according to law, deposes and says: That he is the traffic manager of the Merchants' and Manufacturers' Traffic Association of Sacramento, one of the petitioners in the above-entitled cause, and verifies the foregoing petition on behalf of all of said petitioners; and that he knows the facts stated in the above and foregoing petition, and that the statements therein are true.

G. J. BRADLEY.

Subscribed and sworn to before me this 9th day of July, A. D. 1915.

[SEAL.]

FLORA HALL,

*Notary Public in and for the City and County of
San Francisco, State of California.*

(Here follows Exhibits A and B attached to the petition, being Second Supplemental Report and Order, respectively, Fourth Section Applications Nos. 205, etc., decided April 30, 1915, 34 I. C. C. R. 13, which said exhibits will be found in another portion of the record.)

Endorsed: Filed July 10, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

31 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS TRAFFIC ASSOCIATION
of Sacramento, Traffic Bureau of San Jose Chamber
of Commerce, Stockton Traffic Bureau, and City of
Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE
Commission, Atchison, Topeka & Santa Fe Railway
Company, Chicago, Rock Island & Pacific Railway
Company, Denver & Rio Grande Railroad Company,
Southern Pacific Company, Union Pacific Railroad
Company, and Western Pacific Railroad Company,
respondents.

No. 191,
in Equity.

Amendment to petition.

To the judges of the above court:

The Merchants' and Manufacturers' Traffic Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, and Stockton Traffic Bureau, duly organized and existing associations of their respective cities as above mentioned, and the city of Santa Clara, a

municipal corporation and body politic of the State of California, bring this their amendment to their petition against the United States of America, Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company and thereupon complain and say:

32

I.

The petition of petitioners herein filed on July 10, 1915, is in all respects affirmed, and petitioners bring this amendment to the petition as an addition to the aforesaid bill.

II.

The petition filed herein on July 10, 1915, is hereby amended by adding thereto the following paragraphs to be called paragraphs XXVa and XXVb, to be inserted between paragraphs XXV and XXVI of said bill and to read as follows:

XXVa.

Petitioners herein aver that neither they nor the cities of Sacramento, Stockton, San Jose, or Santa Clara, nor any of the commercial bodies of said cities, were parties to the proceedings before the Interstate Commerce Commission in Fourth Section Applications Nos. 205, 342, 343, 344, 349, 350, and 352. That the final order in said hearings was made by the Interstate Commerce Commission on April 30, 1915. That petitioners herein, upon obtaining knowledge of said order, filed with the Interstate Commerce Commission their written petition in due and regular form, setting forth specifically the facts and figures showing the population and geographical situation of the cities of Sacramento, Stockton, San Jose, and Santa Clara, the location of said cities with regard to rail and water competition, that said cities had been extended terminal rates by reason of water competition which always has and still does exist, and that no changed conditions had arisen to justify an increase in rail rates to said cities for westbound transcontinental freight, that the order of the commission of April 30, 1915, was not pursuant to the directions of the commission in the decision of January 29, 1915, that said order was

33 not justified by substantial evidence and was unjust and discriminatory as against the four cities mentioned, and that said order, if allowed to stand, would cause irreparable damage and injury to said petitioners. In said petition to the Interstate Commerce Commission the petitioners herein asked for an opportunity to be heard and to show that the order of the Interstate Commerce Commission was unjust and discriminatory as against the receivers and shippers of freight in the four cities, to show the affect that such dis-

crimination would produce, and also to show that irreparable damage and injury would result to petitioners and to the merchants and jobbers of the four cities mentioned if the said order of the Interstate Commerce Commission were allowed to stand. Said petition filed with the commission as aforesaid was denied, and petitioners herein were refused an opportunity to be heard. Notice of the denial of said petition was not received at all by the petitioners from Stockton, San Jose, and Santa Clara and was not received at Sacramento until July 6, 1915. Petitioners herein aver that they were denied by the Interstate Commerce Commission an opportunity to be heard, that property was taken from them without due process of law contrary to the XIV amendment of the United States Constitution, that the rail rates to said cities for westbound transcontinental freight were increased without allowing petitioners herein an opportunity to be heard, and that the increase of such rail rates is contrary to the provisions of the act to regulate commerce.

XXV-b.

The rail carriers extended terminal rates to Sacramento, Stockton, San Jose, and Santa Clara because of water competition. Such terminal rates were extended to the four cities mentioned by tariffs filed by the rail carriers with the Interstate Commerce Commission both prior and subsequent to June 18, 1910. That subsequent to June 18, 1910, the rail carriers have, in addition to extending terminal

34 rates to the four cities mentioned, reduced rates on various westbound transcontinental commodities destined to the four cities, have taken various species of freight from the class list and placed them in the commodity list, and have given to the four cities mentioned lower rates than were theretofore enjoyed, and petitioners aver that subsequent to June 18, 1910, the rail carriers have reduced their freight charges to the four cities mentioned on westbound transcontinental commodities and that such reduction was because of water competition, which still does exist, and that there are no changed conditions to justify any increase in such freight rates or to justify the order of the Interstate Commerce Commission authorizing the rail carriers to increase their charges on such freight destined to the four cities mentioned. That the merchants and jobbers of Sacramento, Stockton, San Jose, and Santa Clara come in active competition with those in the same line of business in San Francisco and Oakland and compete with them in intermediate territory and throughout the States of California and Nevada, in some instances throughout the entire western portion of the United States.

The differential in favor of the four cities mentioned as against San Francisco and Oakland, on freight shipped to points outside of any of the cities just mentioned, is in most instances less than the local haul from San Francisco or Oakland to the four complaining

cities and this differential decreases rapidly, so that on shipments at any distance from the four cities the merchants and jobbers of San Francisco and Oakland can land their goods at such points at the same rate from San Francisco and Oakland as is charged for the same shipment from Sacramento, Stockton, San Jose, or Santa Clara, as the case might be. The tariff filed by the rail carriers pursuant to the orders of the Interstate Commerce Commission aforesaid, under which the merchants and jobbers of Sacramento, Stockton,

San Jose, and Santa Clara must pay for the shipment to them
35 of westbound transcontinental freight a higher charge than do those in the same line of business in San Francisco and Oakland, places such a burden upon the merchants, manufacturers, and jobbers of the four complaining cities that they are and will be unable to compete with the merchants, manufacturers, and jobbers of San Francisco and Oakland; that the moneys invested in the various industries in the four cities mentioned will be lost; that the commercial importance and prosperity of the four cities will be ruined; that thousands of workers will be thrown out of employment; that petitioner herein will suffer irreparable damage and injury; that the merchants and jobbers of the four cities mentioned will not be able to sell to their former customers because of the competition with those in the same line of business in San Francisco and Oakland and that such customers will form new trade relations in San Francisco and Oakland; that the channels of trade will be changed; that no new industries will or can locate at Sacramento, Stockton, San Jose, or Santa Clara, because of the fact that they will be unable to compete with the industries of San Francisco and Oakland because of the lower freight rates to the last-mentioned points; that the industries now located at the four complaining cities will be forced out of business; that all old industries and new industries will be forced to locate at San Francisco and Oakland; and that the two cities last mentioned will have a monopoly of all business; that the great and prosperous industries that have located and flourished at Sacramento, Stockton, San Jose, and Santa Clara under equal rates will be destroyed and confiscated and the petitioners herein and the merchants, manufacturers, and jobbers of the four complaining cities will suffer great and irreparable injury.

The fourth section of the act to regulate commerce makes it unlawful for any common carrier to receive greater com-
36 pensation for transportation of property for shorter than for a longer haul over the same route or line in the same direction, the shorter haul being included in the longer. Westbound transcontinental freight destined to San Francisco and Oakland passing through certain gateways passes through Sacramento, Stockton, San Jose, and Santa Clara, according to the route over which such freight is transported. It is provided, however, that upon application to the commission a carrier may in special cases, after investigation, be authorized by the commission to charge less for

longer than for a shorter haul, and the commission may from time to time prescribe the extent to which the carrier may be relieved from the operation of this section.

The rail carriers in Fourth Section Applications Nos. 205, 342, 343, 344, 349, 350, and 352, before the Interstate Commerce Commission, did not ask to be relieved from the operation of the long and short haul clause of the fourth section in so far as rates to Sacramento, Stockton, San Jose, and Santa Clara were concerned, but petitioned to be allowed to charge the same rates. The commission in its orders of January 29, 1915, and April 30, 1915, in said hearings, arbitrarily eliminated these four cities from the enjoyment of terminal rates and designated them as "back-haul" points, a name which had never before been applied to them, and thereby arbitrarily fixed an adjustment of rates which will work irreparable damage to the merchants, manufacturers, and jobbers of these cities, an adjustment which was not justified by the evidence.

Your petitioners herein make the same prayer as in their bill filed herein on July 10, 1915, but answer under oath to this amendment to the petition is herein expressly waived.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION
OF SACRAMENTO,

TRAFFIC BUREAU OF SAN JOSE CHAMBER OF COMMERCE,
STOCKTON TRAFFIC BUREAU AND CITY OF SANTA CLARA,

By JOHN E. ALEXANDER,
Solicitor for Petitioners.

37 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

G. J. Bradley, being first duly sworn according to law, deposes and says: That he is the traffic manager of the Merchants and Manufacturers' Traffic Association of Sacramento, one of the petitioners in the above-entitled cause, and verifies the foregoing amendment to the petition filed in the above matter on July 10, 1915, on behalf of all of said petitioners; that he knows the facts stated in the foregoing amendment to said petition filed herein, and that the statements in said amendments to said petition are true.

G. J. BRADLEY.

Subscribed and sworn to before me this 23rd day of July, 1915.

[SEAL.]

FLORA HALL,
*Notary Public in and for the City and County of
San Francisco, State of California.*

Endorsed: Filed July 23, 1915. W. B. Maling, clerk. By J. A. Schaertzer, deputy clerk.

38 In the United States District Court, Northern District of California. Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION
of Sacramento, Traffic Bureau of San Jose Chamber
of Commerce, Stockton Traffic Bureau, and City of
Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE
Commission, Atchison, Topeka & Santa Fe Railway
Company, Chicago, Rock Island & Pacific Railway
Company, Denver & Rio Grande Railroad Company,
Southern Pacific Company, Union Pacific Railroad
Company, and Western Pacific Railroad Company,
respondents.

No. 191,
in Equity.

Affidavit for temporary injunction.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

G. J. Bradley, S. E. Semple, and W. D. Wall, being each first duly sworn, depose and say: That they are respectively the traffic manager of the Merchants' and Manufacturers' Traffic Association of Sacramento, California, the traffic Manager of the Chamber of Commerce of Stockton, California, and the manager of the Traffic Bureau of the San Jose Chamber of Commerce; that the duties of their respective offices require them to be, and they and each of them are, familiar with the matters herein stated and know that the statements herein are true.

The rail carriers extended terminal rates to the cities of
39 Sacramento, Stockton, San Jose, and Santa Clara, because
of water competition which always has and still does exist.
That said terminal rates have been extended to said cities in tariffs
filed up to and including Trans-Continental Freight Bureau West-
Bound Tariff No. 1-N and supplements thereto, effective prior to
July 15, 1915, and by various tariffs filed since June 18, 1910, have
extended terminal rates to said cities. The westbound freight trans-
ported by rail carriers is generally designated under two heads, viz,
classified freight and commodities, classified freight being divided
into various classes and taking a much higher rate than is charged
for the freight designated as commodities. The rail carriers have,
in the various tariffs for westbound transcontinental freight which
they have filed since June 18, 1910 (in which tariffs terminal rates
were extended to Sacramento, Stockton, San Jose, and Santa Clara),
taken various species of freight from the class list and designated
them in their tariffs or the western classification of freight, as com-
modities, thus giving to such articles a lower rate, and to said cities
the benefit of terminal rates on such commodities; also in various

tariffs filed since June 18, 1910, the rail carriers have reduced rates on various commodities to those cities, all of which said reductions of rates to said cities of Sacramento, Stockton, San Jose, and Santa Clara were made by the rail carriers because of competition with the water carriers for the transportation of freight to said cities.

The principal industries of Sacramento, Stockton, San Jose, and Santa Clara are those of manufacturing and jobbing, said cities being distributing centers. The amount of the yearly output of manufacturing and jobbing industries in the four mentioned cities, not including enterprises classified as horticultural, agricultural, or viticultural, is as follows: In the city of Sacramento, approximately \$40,000,000.00; in the city of Stockton, approximately 40 \$25,000,000.00; and in the cities of San Jose and Santa Clara, approximately \$20,000,000.00. The number of employees engaged

in said manufacturing and jobbing industries in said cities, not including enterprises classified as horticultural, agricultural, or viticultural, is as follows: In the city of Sacramento, approximately 15,000; in the city of Stockton, approximately 10,000; and in the cities of San Jose and Santa Clara, approximately 8,000. The yearly pay roll of said manufacturing and jobbing industries in said cities, not including enterprises classified as horticultural, agricultural, or viticultural, is as follows: In the city of Sacramento, \$10,000,000.00; in the city of Stockton, \$6,500,000.00; and in the cities of San Jose and Santa Clara, \$5,000,000.00.

The manufacturers and jobbers of Sacramento sell and distribute their goods over a broad scope of territory; to the north as far as Roseburg, Oregon, to the south to Bakersfield, California, to the east throughout the State of Nevada, and to the west in California to Martinez, Benicia, Santa Rosa, and up the coast to Eureka. Throughout all of the above territory the manufacturers and jobbers come into active competition with those in the same line of business in San Francisco and Oakland. In addition to the foregoing, certain manufacturers and jobbers of Sacramento sell and distribute their products throughout the western half of the United States. The rail rates from San Francisco to Sacramento are graded on a 24¢ per 100 pound scale, and the rail rates from San Francisco and Sacramento meet approximately at Martinez and Benicia. In going north from Sacramento the rail rates from San Francisco and Sacramento are the same at the California-Oregon boundary line, the differential in favor of Sacramento being on a 12¢ scale at Woodland, California, and gradually diminishing until the rates from the two points meet at or about the California-Oregon line. Going east-
41 ward, Sacramento enjoys a differential based upon a 12¢ scale, on the main line of the Southern Pacific Company, but which diminishes across the State of Nevada. To Tonopah and Goldfield territories the rates are the same from San Francisco and Sacramento. Going south through the San Joaquin Valley the rates are the same from San Francisco to Sacramento to all points.

The manufacturers and jobbers of Stockton sell and distribute their goods over a broad scope of territory; to the north to the California-Oregon line, to the south to Bakersfield, California, to the east throughout the State of Nevada, and to the west to Martinez and Livermore. Throughout all of the above territory the manufacturers and jobbers come into active competition with those in the same line of business in San Francisco and Oakland. In addition to the foregoing, certain manufacturers and jobbers of Stockton sell and distribute their products throughout the western portion of the United States. The rail charges from San Francisco to Stockton are at present graded on a 10¢ per 100 pound scale, but an 18¢ per 100 pound scale has been authorized, and tariffs therefor have been filed, to become effective August 15, 1915. The rail rates between San Francisco and Stockton meet on the west at Tracey. On shipments to the north and east Stockton has a differential in her favor graded on a 5¢ per 100 pound scale, diminishing as the distance from Stockton increases. On the north the rates become equal at Weed, California, the differential diminishing as you go north; on the east the rates become equal at the California-Nevada line, the differential diminishing as you go east from Stockton; and on the south the rates meet at approximately Bakersfield, the differential likewise diminishing with distance.

The manufacturers and jobbers of San Jose and Santa Clara sell and distribute their goods as far north as South San Francisco and to the borders of Oakland on the two sides of San Francisco Bay, through the Niles Canyon and down the San Joaquin Valley, and down along the coast to San Luis Obispo.

42 Throughout all of the above territory the manufacturers and jobbers of San Jose and Santa Clara come into active competition with those in the same line of business in San Francisco and Oakland. This does not include certain manufacturers and jobbers of San Jose and Santa Clara who distribute their products throughout the entire West. The local charge from San Francisco to San Jose is graded on a 7¢ per 100 pound scale. The rate from San Jose to Sunnyvale, a station nine miles from San Jose on the road to San Francisco, and to all points further north on the same line, is the same. The San Francisco merchant can ship goods to Sunnyvale, nine miles from San Jose, as cheaply as the same goods can be shipped from San Jose to that point. A similar condition exists on the eastern side of the lower end of San Francisco Bay, where the merchants of San Jose and Santa Clara come in competition with those of Oakland. Going out through Niles Canyon, the rates from San Francisco, Oakland, and San Jose are approximately the same. Going south from San Jose the rates from San Jose to Santa Cruz and to Monterey are the same as from San Francisco. Going down the Salinas Valley the same rates are charged to Paso Robles from San Jose and Santa Clara as are charged from San Francisco.

Under the terminal rates which Sacramento, Stockton, San Jose, and Santa Clara have always received, their manufacturers and

jobbers have been able to compete within the territory aforesaid with the other cities enjoying terminal rates, but should said merchants and manufacturers be compelled to pay the local back from San Francisco, or 75% of such local, as the case might be, this additional charge for transportation would make it impossible for them to meet the competition from San Francisco and Oakland, with the

result that the amounts invested in the aforesaid industries in
 43 Sacramento, Stockton, San Jose, and Santa Clara would be a complete loss and the merchants and manufacturers of said cities would suffer irreparable damage and injury.

The Interstate Commerce Commission, in certain matters wherein neither Sacramento, Stockton, San Jose, nor Santa Clara nor any of the commercial organizations thereof were parties, said matters being designated as Fourth Section Applications Nos. 205, 342, 343, 344, 349, 350, and 352, entered its orders of January 29, 1915, and April 30, 1915, whereby the rail carriers were allowed to file tariffs taking the terminal rates from Sacramento, Stockton, San Jose, and Santa Clara, and increasing the charge on westbound transcontinental freight destined to said cities in varying amounts, according to the character of the commodity. That said orders directed the increase of freight rates to the four cities mentioned and took from them the terminal rates, which they have always heretofore enjoyed, without said cities or their commercial bodies having had an opportunity to be heard and without evidence to justify such increases in freight rates. Pursuant to the order of April 30, 1915, the rail carriers filed with the Interstate Commerce Commission their schedule of tariffs, Supplement 16 to Transcontinental Freight Bureau West-Bound Tariff No. 1-N, I. C. C. No. 996 of R. H. Countiss, effective in part on July 15, 1915, and in part on August 15, 1915, wherein the cities of Sacramento, Stockton, San Jose, and Santa Clara are charged for westbound transcontinental freight destined to said cities the full terminal rate to San Francisco, with an additional back-haul charge varying in amount as to the nature of the commodity. On commodities designated as class A the four cities mentioned will be charged 7%, 15%, and 25%, respectively, from Chicago points, Buffalo-Pittsburgh points, and the Atlantic seaboard in excess of the rates enjoyed by San Francisco and Oakland on the same commodities shipped from the same points. On commodities designated as

44 class B the four cities mentioned will be charged an excess over the rate to San Francisco and Oakland of 15¢, 25¢, and 35¢ per 100 pounds on carloads, and 25¢, 40¢, and 55¢ per 100 pounds on less than carloads, respectively, from Chicago points, Buffalo-Pittsburgh points, and the Atlantic seaboard. On commodities designated as class C the four cities mentioned will be charged the full terminal rate to San Francisco and in addition thereto 75% of the local back haul. The local back haul is the maximum additional charge which can be made against the said four cities, and certain maximums are designated in said order of April 30, 1915. The additional amounts,

however, allowed by the aforesaid orders of the Interstate Commerce Commission to be charged for the transportation of westbound transcontinental freight destined to Sacramento, Stockton, San Jose, and Santa Clara, and set forth in the before-mentioned tariff filed by the rail carriers, will in practically every instance amount to more than the full local back-haul charge, and therefore, under the aforesaid orders of the Interstate Commerce Commission, the manufacturers and jobbers of Sacramento, Stockton, San Jose, and Santa Clara will be compelled to pay in practically every instance, on commodities set forth in classes A and B, the full local back-haul charge from San Francisco and on all commodities set forth in class C 75% of the back-haul charge.

The manufacturers and jobbers of Sacramento, Stockton, San Jose, and Santa Clara come in direct competition with those of San Francisco and Oakland, and if the industries of the four first-named cities are compelled to pay the local back haul at the rates before mentioned, or 75% of the same, they will be burdened with an additional cost which will allow the manufacturers and jobbers of San Francisco and Oakland to place their goods in the territory in which they have heretofore mutually competed at a considerably lower
 45 cost than the manufacturers and jobbers of Sacramento, Stockton, San Jose, and Santa Clara and allow them to sell their goods in such territory at prices which can not be met from said four cities. The result will be that the manufacturers and jobbers of said four cities will be forced to confine their business to mere local transactions, and the greater part of the money invested in such industries will be lost. Under the schedules filed by the rail carriers, pursuant to the orders of the Interstate Commerce Commission, the manufacturers and jobbers of San Francisco and Oakland can land their commodities at the door of the consumer in Sacramento, Stockton, San Jose, and Santa Clara at as low a cost as can the manufacturers and jobbers of those cities and within 25% of the local charge in other instances.

The prosperity and commercial importance of Sacramento, Stockton, San Jose, and Santa Clara depend upon their industries which have been fostered and built up under settled conditions and under terminal rates. The additional freight charges to those cities increase the expenses of merchants, manufacturers, and jobbers at those points so that they can not compete against San Francisco and Oakland, and their merchants, manufacturers, and jobbers will suffer irreparable damage and injury, their business will be destroyed, the capital invested in their enterprises will be confiscated, and the commercial importance of Sacramento, Stockton, San Jose, and Santa Clara will be forever lost. Under such conditions no new enterprises will locate at the four cities mentioned, but all industries will be forced to locate at either San Francisco or Oakland, thus giving those points an absolute monopoly. Such a condition is unjust and discriminatory against Sacramento, Stockton, San Jose, and Santa Clara and gives to San Francisco and Oakland an undue

and an unjust preference and advantage. The orders of the Interstate Commerce Commission, as said by the Supreme Court of the United States, should be designed to promote commerce and prosperity and not to destroy that which has always existed. The Interstate Commerce Commission, in order not to disturb settled conditions and in order to allow the merchants of Chicago, Buffalo, or Pittsburgh to compete with the merchants of New York for trade on the Pacific coast, and in order not to disturb settled conditions or to destroy prosperity and industries which have been built up under equal rates, authorized the rail carriers to blanket their rates on westbound transcontinental freight from the Atlantic seaboard to Missouri River points, thus giving all cities within that wide territory the same rates to the Pacific coast. Such rates were not authorized because of water competition, for there is no water competition at Chicago, but for the best interests of the general public. Depriving Sacramento, Stockton, San Jose, and Santa Clara of terminal rates upsets settled conditions, destroys prosperous industries which have grown up and flourished under equal rates, and gives to San Francisco and Oakland a monopoly which is confiscatory of the industries of those four cities.

The merchants and jobbers of Sacramento, Stockton, San Jose, and Santa Clara have built up and established settled trade relations under settled conditions and equal rates. Compelling the merchants and jobbers of those four cities to pay higher freight rates than are charged for like commodities delivered in San Francisco and Oakland will upset and is upsetting the settled trade conditions now existing between the merchants and jobbers of the four complaining cities and their customers, will divert and is diverting the course of trade into new channels and will cause new trade relations to be established between such consumers and the merchants and jobbers of San Francisco and Oakland, to the irreparable injury and damage of the merchants and jobbers of Sacramento, Stockton, San Jose, and Santa Clara. The loss of trade and the establishment of new trade relationships will cause incalculable financial loss to the merchants and jobbers of the four cities mentioned, and such loss will grow greater the longer the said orders of the Interstate Commerce Commission and the tariffs filed thereunder are allowed to remain effective. Trade and prestige, when once lost, can never be fully recovered.

The petitioners in the above matter were not parties to the hearings before the Interstate Commerce Commission in the fourth section applications before mentioned. The tariff above mentioned was filed by the rail carriers pursuant to the order of the Interstate Commerce Commission of April 30, 1915. When petitioners herein received unofficial advice of said order, they filed their written petition with the Interstate Commerce Commission asking for rehearing in said matter in order that the petitioners herein might have the opportunity to show the effect of the discrimination that

would be produced by the adjustment of freight charges fixed in the order of the commission, and also to show that the business interests of said four cities would suffer irreparable injury if the carriers were allowed to establish and maintain the adjustment of rates set forth in said order. The said petition of petitioners herein was denied by the Interstate Commerce Commission and notice of the denial of said petition was received at Sacramento on July 6, 1915. Petitioners herein have been denied a hearing by the Interstate Commerce Commission, have been denied their day in court, have been divested of property without due process of law, and the order allowing the increase in rates on westbound transcontinental commodities destined to Sacramento, Stockton, San Jose, and Santa Clara was made without substantial evidence to justify the same.

48 The tariff filed by the rail carriers pursuant to the order of the Interstate Commerce Commission of April 30, 1915, Supplement 16 before described, is effective July 15, 1915, as to Class C commodities, and August 15, 1915, as to Class A and B commodities. Unless the enforcement of said order and the tariff filed pursuant thereto be restrained, and said order and tariff be set aside, the petitioners in the above cause and the merchants, manufacturers, and jobbers whom they represent, will suffer irreparable damage and injury. The merchants, manufacturers, and jobbers of Sacramento, Stockton, San Jose, and Santa Clara, in carrying on their various industries, must outline their plans and order various commodities a long time in advance of their actual delivery. Any change in rates, even though temporary, will upset their entire scheme of business, will cause a change in trade relations, change the channels of commerce, and divert trade to other routes, and add an additional cost to the expense of production, all of which will make it impossible for them to compete with those engaged in like lines of business in San Francisco and Oakland, and will cause them irreparable damage and injury.

The fourth section of the act to regulate commerce makes it unlawful for any common carrier to receive greater compensation for transportation of property for shorter than for a longer distance over the same route or line in the same direction. It is provided, however, that upon application to the commission a carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for a shorter distance, and the commission may from time to time prescribe the extent to which the carrier may be relieved from the operation of this section.

The carriers in applications No. 205, etc., did not ask to be relieved from the operation of the long and short haul clause
49 of the fourth section, in so far as rates to Sacramento, Stockton, San Jose, and Santa Clara were concerned, but asked that they be allowed to charge the same rates.

The commission, in their order, arbitrarily eliminated these cities from the enjoyment of terminal rates and designated them as "back-haul" points, a name which never before had been applied to them,

thereby arbitrarily fixing an adjustment which will work irreparable injury upon these cities, and an adjustment which is not justified by the evidence, as it has been shown in numerous cases before the commission that actual as well as potential water competition exists at these cities. The carriers themselves recognized this competition, else they would not have asked for this adjustment.

Having been refused by the commission the privilege of retaining terminal rates at these cities, the carriers then, after having been given two options by the commission as to the method of making rates to these cities, submitted such an adjustment as would not disrupt business conditions at those points, and at the same time would retain to their rails a fair share of the water competitive business.

The commission, in the face of this showing, arbitrarily rejected the option submitted by the carriers and authorized a bases of rates to these cities which entirely ignores the water competition from the ports and places these cities in the same category as points hundreds of miles back from the influence of this competition.

The last paragraph of fourth section further states that—

“Whenever a carrier by railroad shall, in competition with a water route or routes, reduce the rates to or from competitive points, it shall not be permitted to increase such rates unless
50 hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.”

Our contention is that the commission, by its order, has ordered the carriers to do exactly what is prohibited by the act. It has nowhere been shown, nor has any effort been made to show, that water competition between San Francisco and these cities has been eliminated or abated. While it is true that the ocean carriers operating through the Panama Canal from the Atlantic seaboard do not at the present time absorb the local rate between San Francisco and Sacramento, Stockton, San Jose, and Santa Clara, it is a fact that upon the opening of the canal their rates from the Atlantic seaboard were reduced to such an extent that the unit of cost to the receiver at the four cities mentioned is less on all commodities than prevailed during the period of absorption. The effect, therefore, of the commission's order will be to very materially increase the unit of the cost at these cities on all commodities received by rail, notwithstanding the fact that the water competition does now exist with full force and to the same extent as heretofore.

The decision of the Interstate Commerce Commission of January 29, 1915, granted the rail carriers the privilege of blanketing their westbound transcontinental freight rates from the Atlantic seaboard to Missouri River, thus directing them to charge the same rates for freight destined to the Pacific coast from all points between the Missouri River and the Atlantic seaboard. Thus the rate on a certain commodity from the Missouri River to San Francisco will be

the same as the rate on the same commodity from New York to San Francisco, although the haul from the latter point exceeds the former by more than a thousand miles. The reasons given for such authority, as stated in the findings of the Interstate Commerce Commission in the aforesaid fourth section applications, handed down January 29, 1915, was that higher rates from interior points would be contrary to the interests of the public. The commission, in regard to charging higher rates from interior points, stated as follows:

"That such policy would result also in serious injury to many of the industries located at interior points which have, under equal rates, built up a large and profitable business on the Pacific coast. Many articles are produced and manufactured both in the interior and on the Atlantic seaboard. Only a certain quantity of these manufactured articles can at present be consumed on the Pacific coast. Any rate adjustment that tends to stimulate the movement of these articles from the Atlantic seaboard will to the same extent decrease the movement from Chicago and other intermediate points. The principal beneficiaries of such an adjustment of rates would be the shippers on or near the Atlantic seaboard to whom would be given a monopoly of many articles in the markets of the Pacific coast. It is clear that the carriers' interest, and the interests of the major part of the public served, lie in the direction of the maintenance of rates from the intermediate points no higher than from the Atlantic coast."

Notwithstanding the foregoing finding, the Interstate Commerce Commission arbitrarily eliminated Sacramento, Stockton, San Jose, and Santa Clara from the list of California terminals and directed the rail carriers to charge a higher rate for a shorter haul to said cities than under the said orders of the commission and the tariff filed thereto will be charged to San Francisco and Oakland.

52 The situation with regard to industries which have located at Sacramento, Stockton, San Jose, and Santa Clara is the same as that outlined in the above-mentioned findings of the commission, and the rate adjustment ordered by the commission will have the same disastrous effect upon the business interests of the four cities mentioned as would result to interior eastern points should they be charged higher rates. The above-mentioned orders of the commission unjustly discriminate against the business interests of Sacramento, Stockton, San Jose, and Santa Clara, with the result of unsettling business conditions and causing irreparable damage and injury.

Therefore petitioners pray the judges of this honorable court for an interlocutory order suspending the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, and the tariffs filed pursuant thereto in so far as they allow or charge for the transportation of transcontinental westbound freight destined to Sacramento, Stockton, San Jose, and Santa Clara any greater

amount than is charged for the carriage of like freight to San Francisco and Oakland.

G. J. BRADLEY,
S. E. SEMPLE,
W. D. WALL.

Subscribed and sworn to before me this 22d day of July, 1915.

[SEAL.]

FLORA HALL,

*Notary Public in and for the City and
County of San Francisco, State of California.*

Endorsed: Filed July 23, 1915. W. B. Maling, Clerk, by J. A. Schaertzer, deputy clerk.

53 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC
Association of Sacramento, Traffic Bureau of
San Jose Chamber of Commerce, Stockton
Traffic Bureau, and City of Santa Clara,
petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COM-
merce Commission, Atchison, Topeka & Santa
Fe Railway Company, Chicago, Rock Island
& Pacific Railway Company, Denver & Rio
Grande Railroad Company, Southern Pacific
Company, Union Pacific Railroad Company,
and Western Pacific Railroad Company, re-
spondents.

No. 191, in Equity.

Affidavit for temporary injunction.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

G. J. Bradley, being first duly sworn, deposes and says: That he is the traffic manager of the Merchants' and Manufacturers' Traffic Association of Sacramento, California, and that the duties of his office require him to be familiar with the facts hereinafter mentioned and that he knows the statements herein contained are true.

That Sacramento is situated on the navigable waters of the Sacramento River and that ocean-going vessels have docked within the limits of said city. That the Sacramento River is navigable for vessels of deep draught during the greater portion of the year, and that four steamer lines run regularly throughout the year between

San Francisco and Sacramento, carrying freight of all descriptions, a large portion of which originates in eastern defined territory. That Sacramento has a population of over 60,000 and is located on the main lines of the Southern Pacific Company and Western Pacific Company, both transcontinental carriers, and is also reached by joint rates and through routes via the Atchi-

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son, Topeka & Santa Fe Railway in connection with the Central California Traction Company via Stockton, California, and the Oakland, Antioch & Eastern Railway via Bay Point, California. That prior to the advent of railroads in California freight from eastern territory was brought by sea-going vessels and landed at the door of Sacramento by an all-water route. That the amount and importance of these freight shipments by water are so great that the rail carriers, after the building of the transcontinental lines, were forced to extend terminal rates to Sacramento. That this water competition always has existed and still does exist, and no changed conditions have arisen which would justify the increase of freight charges to Sacramento on transcontinental westbound commodities, and the orders of the Interstate Commerce Commission directing such increase are against the direct inhibition of the provisions of the fourth section of the act to regulate commerce.

Transcontinental westbound freight destined to San Francisco by way of certain gateways pass through said city of Sacramento, and to charge a greater rate to Sacramento than is charged to San Francisco, the Sacramento haul being the shorter and included in the longer, is contrary to the provisions of the fourth section of the act to regulate commerce.

By reason of the fact that terminal rates were extended to Sacramento and that she was entitled to the same, many industries of great importance have been located at said city and their welfare is dependent upon the retention of such rates. The merchants
55 of Sacramento come in active competition with the merchants throughout the State of California, especially with those of Oakland and San Francisco, and any increase in freight charges to Sacramento would add such an expense that they could not meet the competition of other points, especially Oakland and San Francisco, and the result would be absolute ruin to the business enterprises of California's capital.

The amount of transcontinental westbound freight received yearly at Sacramento, brought there by the rail carriers, is in excess of 200,000 tons. The local rate from San Francisco to Sacramento is graded on a 24¢ per 100-pound scale. Therefore, the increase in freight charges to Sacramento on the present transcontinental westbound freight brought to that city would amount to between \$750,000.00 and \$1,000,000.00. That if the merchants and manufacturers of Sacramento are compelled to pay that amount in excess of their present charges they will be unable to meet the competition from San Francisco and Oakland, and their present business, which is that of manufacturing and wholesale distributing, will be absolutely ruined and the prosperity and commercial importance of that city will be doomed to destruction unless the aforesaid orders of January 29, 1915, and April 30, 1915, of the Interstate Commerce Commission and the tariff filed pursuant thereto by the rail carriers are set aside.

That the city of Sacramento is entitled to terminal rates by reason of water competition, which is the same circumstance and condition

which entitles San Francisco and Oakland to be designated as terminals. The orders of the Interstate Commerce Commission and the tariffs filed by the rail carriers pursuant to such orders, wherein higher rates are charged on westbound transcontinental freight destined to Sacramento than are charged for like freight destined to San Francisco and Oakland, are discriminatory and unjust as to Sacramento and contrary to the provisions of the act to regulate commerce. Unless the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, and the tariff filed pursuant thereto by the rail carriers be suspended, the merchants, manufacturers, jobbers, and all commercial interests of the city of Sacramento will suffer irreparable damage and injury.

Annexed hereto, marked Exhibits A and B, and to which reference is specially made, are schedules showing the amounts that the jobbers of Sacramento will have to pay over and above those paid by San Francisco jobbers on various commodities shipped to and sold in competitive territory under the tariff Supplement No. 16 to Trans-Continental Freight Bureau West-Bound Tariff No. 1-N, I. C. C., No. 996 of R. H. Countiss, filed with the Interstate Commerce Commission by the rail carriers pursuant to the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, set forth in the petition filed herein. Reference to said tariff is hereby specially made, and the same is made a part hereof by reference.

Wherefore, affiant prays that said orders and the tariff filed thereunder be suspended until after a final determination of the above case.

G. J. BRADLEY.

Subscribed and sworn to before me this 22nd day of July, 1915.

[SEAL.]

FLORA HALL,
Notary Public in and for the City and County
of San Francisco, State of California.

EXHIBIT A.

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on schedule "C" commodities from Eastern defined territories to representative points of destination.

DISTRIBUTIVE COST.

To—	Weed.	Suisun.	Tono- pah & Gold- field.	Fresno.	Rate used from distribu- tive point.
CANNED GOODS FROM GROUP A.					
Old rates, item 1088-A:					
Sacramento.....	95	155	111	262	129
San Fran.....	95	161	104	262	129
Diff. in favor Sac.....		6			
" " " San Fran.....			7		
New rates, Item 1088-B:					
Sacramento.....	85	145	101	252	119
San Fran.....	75	141	84	242	109
Diff. in favor San Fran.....	10	4	17	10	10
Sacramento net diff. loss.....		10	10	10	10

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Suisun.	Tono- pah & Gold- field.	Fresno.	Rate used from distribu- tive point.
LAWN MOWERS FROM GROUP B.						
Old rates, item 544:						
Sacramento.....	125	207	145	338	171	2nd class.
San Fran.....	125	214	137	358	171	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 1142:						
Sacramento.....	107	180	127	320	153	
San Fran.....	95	184	107	308	141	
Diff. in favor San Fran.....	12	5	20	12	12	
Sacramento net diff. loss.....		12	12	12	12	
TRACK & RAIL, DOOR, FROM GROUP B.						
Old rates, item 1150:						
Sacramento.....	85	152	103	277	123	3rd class.
San Fran.....	85	159	95	277	123	
Diff. in favor Sac.....		7				
Diff. in favor San Fran.....			8			
New rates, item 1150-A:						
Sacramento.....	95	162	113	287	133	
San Fran.....	85	159	95	277	123	
Diff. in favor San Fran.....	10	3	18	10	10	
Sacramento net diff. loss.....		10	10	10	10	
58 IRON FROM GROUP B.						
Old rates, item 1172:						
Sacramento.....	80	140	96	247	114	4th class.
San Fran.....	80	146	89	247	114	
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, item 1172-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sacramento net diff. loss.....		10	10	10	10	
BAR IRON FROM GROUP B.						
Old rates, item 1178:						
Sacramento.....	80	140	96	247	114	4th class.
San Fran.....	80	146	89	247	114	
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, item 1178-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sacramento net diff. loss.....		10	10	10	10	
BOLTS & NUTS FROM GROUP B.						
Old rates, item 1182:						
Sacramento.....	80	140	96	247	114	4th class.
San Fran.....	80	146	89	247	114	
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, item 1182-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sacramento net diff. loss.....		10	10	10	10	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Sulsun.	Tono- pah & Gold- field.	Fresno.	Rate used from distribu- tive point.
NAILS & SPIKES FROM GROUP B.						
Old rates, Item 1198:						
Sacramento.....	85	145	101	252	119	4th class.
San Fran.....	85	151	94	252	119	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, Item 1198-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sacramento net diff. loss.....		10	10	10	10	
50 PIPE, CAST, FROM GROUP B.						
Old rates, Item 1208:						
Sacramento.....	65	125	81	232	99	4th class.
San Fran.....	65	131	74	232	99	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, Item 1208-A:						
Sacramento.....	75	135	91	242	109	
San Fran.....	65	131	74	232	99	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
PIPE, WROUGHT, FROM GROUP B.						
Old rates, Item 1210:						
Sacramento.....	65	125	81	232	99	4th class.
San Fran.....	65	131	74	232	99	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, Item 1211:						
Sacramento.....	75	135	91	242	109	
San Fran.....	65	131	74	232	99	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
SHEET IRON FROM GROUP B.						
Old rates, Item 1216:						
Sacramento.....	85	145	101	252	119	4th class.
San Fran.....	83	151	94	252	119	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, Item 1217 & 1218-B:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
HORSESHOES FROM GROUP B.						
Old rates, Item 1222:						
Sacramento.....	85	145	101	252	119	4th class.
San Fran.....	85	151	94	252	119	
Diff. in favor Sac.....		6				
" " " " San Fran.....			7			
New rates, Item 1222-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Suisun.	Tono- pah & Gold- field.	Framo.	Rate used from distrib- utive point
60 TUBING IRON FROM GROUP B.						
Old rates, Item 1232:						4th class.
Sacramento.....	65	125	81	232	99	
San Fran.....	65	131	74	232	99	
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, Item 1232-A:						
Sacramento.....	75	135	91	242	109	
San Fran.....	65	131	74	232	99	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
LYE FROM GROUP A.						
Old rates, Item 1244:						4th class.
Sacramento.....	75	135	91	242	109	
San Fran.....	75	141	84	242	109	
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, Items 1244-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
OILS FROM GROUP D.						
Old rates, Item 1250:						3rd class.
Sacramento.....	90	157	108	282	128	
San Fran.....	90	164	100	282	128	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, Item 1250-A:						
Sacramento.....	100	167	118	292	138	
San Fran.....	90	164	100	282	128	
Diff. in favor San Fran.....	10	3	18	10	10	
Sac. net diff. loss.....		10	10	10	10	
PAINT FROM GROUP A.						
Old rates, Item 1254:						4th class.
Sacramento.....	95	155	111	262	129	
San Fran.....	95	161	104	262	129	
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, Item 1254-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
61 PAPER FROM GROUP D.						
Old rates, Item 1264-B:						2nd class.
Sacramento.....	75	157	95	288	121	
San Fran.....	75	164	87	288	121	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, Item 1264-C:						
Sacramento.....	85	167	105	298	131	
San Fran.....	75	164	87	288	121	
Diff. in favor San Fran.....	10	3	18	10	10	
Sac. net diff. loss.....		10	10	10	10	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Suisun.	Tombah & Goldfield.	Fresno.	Rate used from distributive point.
BUILDING PAPER FROM GROUP D.						
Old rates, Item 1266-A:						
Sacramento.....	75	142	93	267	113	3rd class.
San Fran.....	75	149	85	267	113	
Diff. in favor Sac.....		7				
Diff. " " San Fran.....			8			
New rates, Item 1266-B:						
Sacramento.....	85	152	103	277	123	
San Fran.....	75	149	85	267	113	
Diff. in favor San Fran.....	10	3	18	10	10	
Sac. net diff. loss.....		10	10	10	10	
WRAPPING PAPER FROM GROUP D.						
Old rates, Item 1272:						
Sacramento.....	90	157	106	282	128	3rd class.
San Fran.....	90	164	100	282	128	
Diff. in favor Sac.....		7				
Diff. " " San Fran.....			8			
New rates, Item 1273-A:						
Sacramento.....	50	157	106	282	128	
San Fran.....	50	154	90	272	118	
Diff. in favor San Fran.....	10	3	18	10	10	
Sac. net diff. loss.....		10	10	10	10	
SOAP FROM GROUP A.						
Old rates, Item 1302:						
Sacramento.....	80	140	96	247	114	4th class.
San Fran.....	80	146	89	247	114	
Diff. in favor Sac.....		6				
Diff. " " San Fran.....			7			
New rates, Item 1302-A:						
Sacramento.....	90	150	106	257	124	
San Fran.....	80	146	89	247	114	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
62 SODA FROM GROUP A.						
Old rates, Item 1306:						
Sacramento.....	84	144	100	251	118	4th class.
San Fran.....	84	150	93	251	118	
Diff. in favor Sac.....		6				
Diff. " " San Fran.....			7			
New rates, Item 1306-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
STARCH FROM GROUP A.						
Old rates, Item 912:						
Sacramento.....	100	167	118	292	138	3rd class.
San Fran.....	100	174	110	292	138	
Diff. in favor Sac.....		7				
Diff. " " San Fran.....			8			
New rates, Item 1313:						
Sacramento.....	95	162	113	287	133	
San Fran.....	85	159	95	277	123	
Diff. in favor San Fran.....	10	3	18	10	10	
Sac. net diff. loss.....		10	10	10	10	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Sulsun.	Tono- pah & Gold- field.	Fresno.	Rate used from distribu- tive point.
RADIATORS FROM GROUP B.						
Old rates, item 928-A:						3rd class.
Sacramento.....	100	167	118	292	138	
San Fran.....	100	174	110	292	138	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 1313-1:						
Sacramento.....	85	152	103	277	123	
San Fran.....	75	149	85	267	113	
Diff. in favor San Fran.....	10	3	18	10	10	
Sac. net diff. loss.....		10	10	10	10	
WIRE, BARBED, FROM GROUP B.						
Old rates, item 1328:						4th class.
Sacramento.....	85	145	101	252	119	
San Fran.....	85	151	94	252	119	
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, items 1328-A & 1198-A:						
Sacramento.....	85	145	101	252	119	
San Fran.....	75	141	84	242	109	
Diff. in favor San Fran.....	10	4	17	10	10	
Sac. net diff. loss.....		10	10	10	10	
63	WIRE FENCING FROM GROUP B.					
Old rates, item 1332:						3rd class.
Sacramento.....	90	157	108	282	128	
San Fran.....	90	164	100	282	128	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 1332-A:						
Sacramento.....	85	152	103	277	123	
San Fran.....	75	149	85	267	113	
Diff. in favor San Fran.....	10	3	18	10	10	
Sac. net diff. loss.....		10	10	10	10	

Exhibit A.

Explanation: Commodities used represent in part schedule "C" of which there is a regular movement from eastern defined territory to Pacific coast.

Groups used represent territory of origin:

Group A—Atlantic seaboard.

" B—Pittsburg territory.

" C—Indiana & Ohio territory.

" D—Chicago territory.

Points of destination used are representative of San Francisco and Sacramento distributive territory in different directions, being located as follows:

Suisun, Cal., from San Francisco, 48 miles; from Sacramento, 40 miles.

Weed, Cal., from San Francisco, 323 miles; from Sacramento, 260 miles.

Tonapah, Nev., from San Francisco, 486 miles; from Sacramento, 397 miles.

Goldfield, Nev., from San Francisco, 517 miles; from Sacramento, 428 miles.

Fresno, Cal., from San Francisco, 194 miles; from Sacramento, 170 miles.

Tariff references.

Old rates: Transcontinental Freight Bureau Westbound Tariff No. 1-N, I. C. C. 996.

New rates: Transcontinental Freight Bureau Westbound Tariff No. 1-N, I. C. C. 996, supplement 16.

Classification used: Western Classification No. 53, I. C. C. 11.

Class rates: Southern Pacific Co. Local Tariff No. 711, I. C. C. 3543.

Class rates: Pacific Freight Tariff Bureau L. J. & P. Tariff 7-C, I. C. C. 215.

EXHIBIT B.

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on certain westbound commodities other than those designated schedule "C" commodities, as shown in Exhibit A, to representative points of destination if tariffs on file become effective August 15, 1915.

DISTRIBUTIVE COST.

To—		Weed.	Suisun.	Tonopah & Goldfield.	Fresno.	Rate used from distributive point.
FLOWS FROM GROUP C.						
Old rates, Item 210:						
Sacramento.....	125	192	143	317	163	3rd class.
San Fran.....	125	199	135	317	163	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, Item 210:						
Sacramento.....	138	205	156	330	176	
San Fran.....	125	199	135	317	163	
Diff. in favor San Fran.....	13	6	21	13	12	
Sac. not diff. loss.....		13	13	13	13	
IMPLEMENTS, HAND, FROM GROUP C.						
Old rates, Item 224-A:						
Sacramento.....	135	217	155	348	181	2nd class.
San Fran.....	135	224	147	348	181	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, Item 224-A:						
Sacramento.....	163	235	173	366	199	
San Fran.....	135	224	147	348	181	
Diff. in favor San Fran.....	18	11	26	18	18	
Sac. not diff. loss.....		18	18	18	18	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on certain westbound commodities other than those designated schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Suisun.	Tono- pah & Gold- field.	Fresno.	Rate used from distribu- tive point.
AMMUNITION FROM GROUP C.						
Old rates, item 226:						
Sacramento.....	150	232	170	363	196	2nd class.
San Fran.....	150	239	162	363	196	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 226:						
Sacramento.....	168	250	188	381	214	
San Fran.....	150	239	162	363	196	
Diff. in favor San Fran.....	18	11	26	18	18	
Sac. net diff. loss.....		18	18	18	18	
BAKING POWDER FROM GROUP A.						
Old rates, item 234:						
Sacramento.....	120	187	138	312	158	3rd class.
San Fran.....	120	194	130	312	158	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 234:						
Sacramento.....	136	203	154	328	174	
San Fran.....	120	194	130	312	158	
Diff. in favor San Fran.....	16	9	24	16	16	
Sac. net diff. loss.....		16	16	16	16	
BICYCLES FROM GROUP A.						
Old rates, item 244:						
Sacramento.....	250	394	284½	610	329½	1st class.
San Fran.....	250	407½	271	610	329½	
Diff. in favor Sac.....		13½				
" " " San Fran.....			13½			
New rates, item 244:						
Sacramento.....	274	418	308½	634	353½	
San Fran.....	250	407½	271	610	329½	
Diff. in favor San Fran.....	24	10½	37½	24	24	
Sac. net diff. loss.....		24	24	24	24	
BOTTLES FROM GROUP C.						
Old rates, item 263:						
Sacramento.....	75	142	93	267	113	3rd class.
San Fran.....	75	149	85	267	113	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 263:						
Sacramento.....	86	153	104	278	124	
San Fran.....	75	149	85	267	113	
Diff. in favor San Fran.....	11	4	19	11	11	
Sac. net diff. loss.....		11	11	11	11	
CARPET FROM GROUP A.						
Old rates, item 292:						
Sacramento.....	185	281	208	425	238	1st class.
San Fran.....	185	290	199	425	238	
Diff. in favor Sac.....		9				
" " " San Fran.....			9			
New rates, item 292:						
Sacramento.....	209	305	232	449	262	
San Fran.....	185	290	199	425	238	
Diff. in favor San Fran.....	24	15	33	24	24	
Sac. net diff. loss.....		24	24	24	24	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on certain westbound commodities other than those designated schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Suisun.	Tono- pah & Gold- field.	Fresno.	Rate used from distribu- tive point.
66 REFRIGERATORS FROM GROUP A.						
Old rates, item 366:						
Sacramento.....	135	217	155	348	181	2nd class.
San Fran.....	135	224	147	348	181	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 366:						
Sacramento.....	151	233	171	404	197	
San Fran.....	135	224	147	448	181	
Diff. in favor San Fran.....	16	9	24	16	16	
Sac. net diff. loss.....		16	16	16	16	
DRUGS FROM GROUP A.						
Old rates, item 378-A:						
Sacramento.....	150	246	173	390	203	1st class.
San Fran.....	150	255	164	390	203	
Diff. in favor Sac.....		9				
" " " San Fran.....			9			
New rates, item 378-A:						
Sacramento.....	174	270	197	414	227	
San Fran.....	150	255	164	390	203	
Diff. in favor San Fran.....	24	15	33	24	24	
Sac. net diff. loss.....		24	24	24	24	
EARTHENWARE FROM GROUP A.						
Old rates, item 400:						
Sacramento.....	115	197	135	328	161	2nd class.
San Fran.....	115	204	127	328	161	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 400:						
Sacramento.....	128	210	148	341	174	
San Fran.....	115	204	127	328	161	
Diff. in favor San Fran.....	13	6	21	13	13	
Sac. net diff. loss.....		13	13	13	13	
LUMBER FROM GROUP D.						
Old rates, item 650:						
Sacramento.....	80	140	96	247	114	4th class.
San Fran.....	80	146	89	247	114	
Diff. in favor Sac.....		6				
" " " San Fran.....			7			
New rates, item 650:						
Sacramento.....	86	146	102	233	120	
San Fran.....	80	146	89	247	114	
Diff. in favor San Fran.....	6		13	6	6	
Sac. net diff. loss.....		6	6	6	6	
67 MACHINERY FROM GROUP D.						
Old rates, item 660:						
Sacramento.....	150	232	170	363	196	2nd class.
San Fran.....	150	239	162	363	196	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 660:						
Sacramento.....	161	243	181	374	207	
San Fran.....	150	239	162	363	196	
Diff. in favor San Fran.....	11	4	19	11	11	
Sac. net diff. loss.....		11	11	11	11	

Exhibit showing comparative distributive cost to San Francisco and Sacramento manufacturers and jobbers on certain westbound commodities other than those designated schedule "C" commodities, etc.—Continued.

DISTRIBUTIVE COST—Continued.

To—		Weed.	Suisun.	Tono- pah & Gold- field.	Fremo.	Rate used from distribu- tive point.
EARTHENWARE, PLUMBERS' GOODS FROM GROUP B.						
Old rates, item 784:						1st class.
Sacramento.....	170	266	193	410	223	
San Fran.....	170	275	184	410	223	
Diff. in favor Sac.....		9				
" " " San Fran.....			9			
New rates, item 784:						
Sacramento.....	188	284	211	428	241	
San Fran.....	170	275	184	410	223	
Diff. in favor San Fran.....	18	9	27	18	18	
Sac. net diff. loss.....		18	18	18	18	
BATHTUBS FROM GROUP B.						
Old rates, item 786:						1st class.
Sacramento.....	180	276	203	420	233	
San Fran.....	180	285	194	420	233	
Diff. in favor Sac.....		9				
" " " San Fran.....			9			
New rates, item 786:						
Sacramento.....	198	294	221	438	251	
San Fran.....	180	285	194	420	233	
Diff. in favor San Fran.....	18	9	27	18	18	
Sac. net diff. loss.....		18	18	18	18	
STAMPED WARE FROM GROUP B.						
Old rates, item 910-A:						2nd class.
Sacramento.....	120	202	140	333	166	
San Fran.....	120	209	132	333	166	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 910-A:						
Sacramento.....	128	210	148	341	174	
San Fran.....	120	209	132	333	166	
Diff. in favor San Fran.....	8	1	16	8	8	
Sac. net diff. loss.....		8	8	8	8	
68 GAS STOVES FROM GROUP C.						
Old rates, item 938-A:						3rd class.
Sacramento.....	130	197	148	322	168	
San Fran.....	130	204	140	322	168	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 938-A:						
Sacramento.....	143	210	161	335	181	
San Fran.....	130	204	140	322	168	
Diff. in favor San Fran.....	13	6	21	13	13	
Sac. net diff. loss.....		13	13	13	13	
WOODENWARE FROM GROUP D.						
Old rates, item 1060:						2nd class.
Sacramento.....	150	232	170	363	196	
San Fran.....	150	239	162	363	196	
Diff. in favor Sac.....		7				
" " " San Fran.....			8			
New rates, item 1060:						
Sacramento.....	161	243	181	374	207	
San Fran.....	150	239	168	363	196	
Diff. in favor San Fran.....	11	4	13	11	11	
Sac. net diff. loss.....		11	11	11	11	

Exhibit B.

Explanation: Commodities used represent in part regular movement from eastern defined territory to Pacific coast.

Groups used represent territory of origin:

Group A—Atlantic seaboard.

" B—Pittsburgh territory.

" D—Chicago territory.

Points of destination used are representative of San Francisco and Sacramento distributive territory in different directions, being located as follows:

Suisun, Cal., from San Francisco, 48 miles; from Sacramento, 40 miles.

Weed, Cal., from San Francisco, 323 miles; from Sacramento, 260 miles.

Tonopah, Nev., from San Francisco, 486 miles; from Sacramento, 397 miles.

Goldfield, Nev., from San Francisco, 517 miles; from Sacramento, 488 miles.

Fresno, Cal., from San Francisco, 194 miles; from Sacramento, 170 miles.

Tariff references.

Old rates: Transcontinental Freight Bureau Westbound Tariff No. 1-N, I. C. C. 996.

New rates: Transcontinental Freight Bureau Westbound Tariff No. 1-N, I. C. C. 996, supplement 16.

Classification used: Western Classification No. 53, I. C. C. 11.

Class rates: Southern Pacific Co. Local Tariff No. 711, I. C. C. 3543.

Class rates: Pacific Freight Tariff Bureau J. L. & P. Tariff No. 7-C, I. C. C. 215.

Endorsed: Filed Jul. 23, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

69 In the United States District Court, Northern District of California, second division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

No. 191, in Equity.

Affidavit for temporary injunction.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

S. E. Semple, being first duly sworn, deposes and says: That he is the traffic manager of the Stockton Traffic Bureau, of Stockton, California, and that the duties of his office require him to be familiar with the facts hereinafter mentioned, and that he knows the statements herein contained are true.

Stockton is a city with a population of 42,000 and is a manufacturing and distributing center. Manufacturers, jobbers, and many industries have located in Stockton because of the fact that she has enjoyed and was entitled to terminal rates, and such industries have flourished and prospered under equal rates.

70 That the city of Stockton is located upon the San Joaquin River, which is a navigable waterway, and that two regular lines of steamers ply daily between said city of Stockton and the city of San Francisco, carrying freight of all kinds and character, a large portion of which originates in eastern defined territory. That the Government of the United States maintains a channel from the San Joaquin River to the heart of the city of Stockton to a depth at all times of 9½ feet, and from November to August to a depth of 14 feet.

The city of Stockton is on the main lines of the Southern Pacific Company, Western Pacific Railway Company, and the Atchison, Topeka & Santa Fe Railway Company, and is on direct route of said rail carriers to the cities of Oakland and San Francisco. To allow the rail carriers to charge a greater rate on westbound trans-continental freight destined to Stockton than is charged for the same freight destined to San Francisco or Oakland, is to make a

greater charge for the shorter haul, the shorter haul being included in the longer haul, and is contrary to the provisions of the fourth section of the act to regulate commerce.

Stockton receives each year by rail over 130,000 tons of freight originating in eastern defined territory. The local rate from San Francisco to Stockton is graded on a 10¢ per 100 pound scale, but an 18¢ per 100 pound scale has been authorized and tariffs therefor have been filed, effective August 5, 1915. The increased freight charges on westbound transcontinental freight which the merchants of Stockton must pay under the orders of the Interstate Commerce Commission will, according to the back-haul rate charged, amount to more than \$150,000.00 or \$225,000.00 per year. This increased charge will make it impossible for the merchants, manufacturers, and jobbers of Stockton to meet the competition of those in the same line of business in San Francisco and Oakland, to their irreparable injury.

71 That the city of Stockton is entitled to terminal rates by reason of water competition, which is the same circumstance and condition which entitled San Francisco and Oakland to be designated as terminals. The orders of the Interstate Commerce Commission and the tariffs filed by the rail carriers pursuant to such orders, wherein higher rates are charged on westbound transcontinental freight destined to Stockton than are charged for like freight destined to San Francisco and Oakland, are discriminatory and unjust as to Stockton and contrary to the provisions of the act to regulate commerce. Unless the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, and the tariff filed pursuant thereto by the rail carriers be suspended, the merchants, manufacturers, jobbers, and all commercial interests of the city of Stockton will suffer irreparable damage and injury.

Hereto attached, as "Exhibit A," is a schedule showing exactly the amounts which the jobbers of Stockton will have to pay over and above those paid by the San Francisco jobbers on specific articles sold in competitive territory. This schedule shows differences based on the present 8¢ per 100 lbs. back haul, whereas a rate of 18¢ per 100 lbs. has been authorized and the tariff therefor has been filed, to become effective August 5, 1915. This new rate will in each instance increase the difference by 10¢ per 100 lbs.

Wherefore, affiant prays that said orders and the tariff filed thereunder be suspended until after a final determination of the above case.

S. E. SEMPLE.

Subscribed and sworn to before me this 22nd day of July, 1915.

[SEAL]

FLORA HALL,

*Notary Public in and for the City and County of
San Francisco, State of California.*

EXHIBIT A.

Exhibit showing comparative cost to jobbers at San Francisco and Stockton in delivering goods to points of consumption, using carload rate from eastern points of origin plus less rate to final destination.

RATES IN CENTS PER 100 POUNDS.

Item 1088B. Canned goods, from Group A points.

Carload to San Francisco.....	75	Carload to terminal point.....	75
		Arbitrary back.....	08
		Thru to Stockton.....	83
C. L. to San Francisco.....	75	C. L. to San Francisco.....	75
Less C. L. to Angels, Cal.....	36	Less c. l. to Cal.-Ore. line.....	67½
Thru.....	111	Thru.....	142½
C. L. to Stockton.....	83	C. L. to Stkn.....	83
Less C. L. to Angels.....	33	Less c. l. to Cal.-Ore line.....	66½
Thru.....	116	Thru.....	149½
San Francisco advantage.....	05	San Francisco advantage.....	07
Carload to San Francisco.....	75	Carload to San Francisco.....	75
Less C. L. to Brito, Cal.....	23	Less c. l. to Elko, Nev.....	77
Thru.....	98	Thru.....	152
C. L. to Stkn.....	83	C. L. to Stkn.....	83
Less C. L. to Brito.....	21	Less c. l. to Elko.....	76
Thru.....	104	Thru.....	150
San Francisco adv.....	06	San Francisco adv.....	07

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Item 1150A. Rail and track, from Group C points.

To San Francisco, carload.....	85	To terminal point, carload.....	85
		Arbitrary back.....	08
		Through to Stockton.....	93
Carload to San Francisco.....	85	Carload to San Francisco.....	85
Less carload to Angels, Cal.....	39	Less carload to Cal.-Ore. line.....	75
Through.....	124	Through.....	100
Carload to Stockton.....	93	Carload to Stockton.....	93
Less carload to Angels.....	35	Less carload to Cal.-Ore. line.....	74
Through.....	128	Through.....	107
San Francisco advantage.....	04	San Francisco advantage.....	07
Carload to San Francisco.....	85	Carload to San Francisco.....	85
Less carload to Brito, Cal.....	27	Less carload to Elko, Nev.....	95
Through.....	112	Through.....	180
Carload to Stockton.....	93	Carload to Stockton.....	93
Less carload to Brito, Cal.....	23	Less carload to Elko.....	93
Through.....	116	Through.....	186
San Francisco advantage.....	04	San Francisco advantage.....	06

74 Item 1172A. Iron and steel articles, from Group B points.

To San Francisco, carload-----	75	To terminal point, carload-----	75
		Arbitrary back-----	08
		Through to Stockton-----	88
Carload to San Francisco-----	75	Carload to San Francisco-----	75
Less carload to Angels-----	36	Less carload to Cal.-Ore. line--	67½
Through-----	111	Through-----	142½
Carload to Stockton-----	83	Carload to Stockton-----	83
Less carload to Angels-----	38	Less carload to Cal.-Ore. line--)	68½
Through-----	116	Through-----	149½
San Francisco advantage-----	05	San Francisco advantage-----	07
Carload to San Francisco-----	75	Carload to San Francisco-----	75
Less carload to Brito-----	23	Less carload to Elko, Nev-----	77
Through-----	98	Through-----	152
Carload to Stockton-----	83	Carload to Stockton-----	83
Less carload to Brito-----	21	Less carload to Elko-----	76
Through-----	104	Through-----	150
San Francisco advantage-----	06	San Francisco advantage-----	07

The above figures also apply on practically all iron and steel articles.

75 Item 1254A. Paints, from Group A, B, C, D.

To San Francisco, carload-----	75	To terminal point-----	75
		Arbitrary back-----	08
		Through to Stockton-----	88
Carload to San Francisco-----	75	Carload to San Francisco-----	75
Less carload to Angels-----	36	Less carload to Cal.-Ore. line--	67½
Through-----	111	Through-----	142½
Carload to Stockton-----	83	Carload to Stockton-----	83
Less carload to Angels-----	38	Less carload to Cal.-Ore. line--	68½
Through-----	116	Through-----	149½
San Francisco advantage-----	05	San Francisco advantage-----	07
Carload to San Francisco-----	75	Carload to San Francisco-----	75
Less carload to Brito-----	23	Less carload to Elko-----	77
Through-----	98	Through-----	152
Carload to Stockton-----	83	Carload to Stockton-----	83
Less carload to Brito-----	21	Less carload to Elko-----	76
Through-----	104	Through-----	150
San Francisco advantage-----	06	San Francisco advantage-----	07

76 Item 1302A. Soap, from Group A, B, C, D.

To San Francisco, carload-----	80	To terminal point-----	80
		Arbitrary back-----	08
		Through to Stockton-----	88
Carload to San Francisco-----	80	Carload to San Francisco-----	80
Less carload to Angels-----	36	Less carload to Cal.-Ore. line--	67½
Through-----	116	Through-----	147½

Carload to Stockton.....	88	Carload to Stockton.....	88
Less carload to Angels.....	33	Less carload to Angels.....	66½
Through.....	121	Through.....	154½
San Francisco advantage.....	05	San Francisco advantage.....	07
Carload to San Francisco.....	80	Carload to San Francisco.....	80
Less carload to Brito.....	23	Less carload to Elko, Nev.....	77
Through.....	103	Through.....	157
Carload to Stockton.....	88	Carload to Stockton.....	88
Less carload to Brito.....	21	Less carload to Elko.....	76
Through.....	109	Through.....	164
San Francisco advantage.....	06	San Francisco advantage.....	07
77	<i>Item 1318A, tile, from Group B.</i>		
To San Francisco carload.....	80	To terminal point.....	80
		Arbitrary back.....	07
		Through to Stockton.....	87
Carload to San Francisco.....	80	Carload to San Francisco.....	80
Less carload to Angels.....	36	Less carload to Cal.-Ore. line.....	67½
Through.....	116	Through.....	147½
Carload to Stockton.....	87	Carload to Stockton.....	87
Less carload to Angels.....	33	Less carload to Angels.....	66½
Through.....	120	Through.....	153½
San Francisco advantage.....	04	San Francisco advantage.....	06
Carload to San Francisco.....	80	Carload to San Francisco.....	80
Less carload to Brito.....	23	Less carload to Elko.....	77
Through.....	103	Through.....	157
Carload to Stockton.....	87	Carload to Stockton.....	87
Less carload to Brito.....	21	Less carload to Elko.....	76
Through.....	108	Through.....	163
San Francisco advantage.....	05	San Francisco advantage.....	06
78	<i>Items 202-204-206-208-210, agricultural implements, from Group A, B, C.</i>		
To San Francisco C. L.....	125	To San Francisco C. L.....	125
Less C. L. to Angels.....	39	Less C. L. to Cal.-Ore. line.....	75
Thru.....	164	Through.....	200
To Stockton C. L.....	136	To Stkn. C. L.....	136
Less C. L. to Angels.....	35	Less C. L. to Cal.-Ore. line.....	74
Thru.....	171	Thru.....	210
S. F. adv.....	07	S. F. adv.....	10
To San Francisco C. L.....	125	To San Francisco C. L.....	125
Less C. L. to Brito.....	27	Less C. L. to Elko, Nev.....	95
Thru.....	152	Thru.....	220
To Stkn. C. L.....	136	To Stkn. C. L.....	136
Less C. L. to Brito.....	23	Less C. L. to Elko.....	93
Thru.....	159	Thru.....	229
S. F. adv.....	07	S. F. adv.....	09

Tariff authority.

Westbound Transcontinental Freight Bureau Tf., in Countiss' I. C. C., 996.

Southern Pacific LF. & P. Tf. 102B, I. C. C., 3432.

Southern Pacific LF. Tf. 711, I. C. C., 3543.

Pacific Frt. Tf. Bureau, 2f-24C, I. C. C., 184.

Westn. Class 53, I. C. C., 11.

(Endorsed): Filed July 23, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

79 In the United States District Court, Northern District of California. Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company, respondents.

No. 191,
in Equity.

Affidavit for temporary injunction.

STATE OF CALIFORNIA,

City and County of San Francisco, ss:

W. D. Wall, being first duly sworn, deposes and says: That he is the manager of the traffic bureau of San Jose Chamber of Commerce, of San Jose, California, and that the duties of his office require him to be familiar with the facts hereinafter mentioned, and that he knows the statements herein contained are true. That San Jose and Santa Clara are adjoining cities, and for the purpose of freight charges are considered as one.

That long prior to the advent of railroads in California or of the building of railroads across the continent, freight from the Atlantic seaboard was brought by the water carriers and landed at

80 Alviso, and thence hauled by dray direct to the door of the consumer in San Jose and in Santa Clara. That ever since 1852 water carriers have regularly plied to Alviso and discharged at that point freight originating in the eastern defined territory; that various steamer lines during all the time aforesaid have had regular runs from Alviso to San Francisco, at times as many as seven boats being regularly employed. The city limits of San Jose extend to Alviso and to deep water on San Francisco Bay, at which point the Army engineers of the United States have recommended extensive improvements to facilitate further deep water shipping; the State

of California has also appointed the harbor commission of the port of San Jose, which commission has been appointed and is fulfilling the duties of its office. The commercial center of San Jose is about six miles from Alviso, and the commercial center of Santa Clara is about four miles only from Alviso. Freight destined to San Jose and Santa Clara is landed at Alviso by the water carrier, and thence hauled at the expense of the water carrier direct to the door of the consumer in San Jose or in Santa Clara. Thus the wholesaler in either of the two cities mentioned is saved the expense of the haul from the freight sheds of the rail carrier either to his own warehouse or to the consumer to whom the goods have been sold.

By reason of the aforesaid water competition the rail carriers extended terminal rates to San Jose and Santa Clara, and said water competition always has and still does exist. Affiant further avers that there has been no elimination of water competition, and that no changed conditions of any kind have arisen which would justify the rail carriers in increasing rates on westbound transcontinental freight destined either to San Jose or to Santa Clara. That an increase of such rates would be contrary to the express provisions of

the fourth section of the act to regulate commerce, and that the action of the Interstate Commerce Commission in directing rail carriers to charge for westbound transcontinental freight destined to San Jose and Santa Clara the full rate to San Francisco, plus 75% of the local back haul on certain commodities and the full local on others, is unjust and discriminatory as to said cities and against the inhibition of the provisions of the fourth section of the act to regulate commerce.

San Jose and Santa Clara are on the main line of the Southern Pacific Company running to San Francisco and Oakland, and freight destined to said last-named cities, going through certain designated gateways, will pass through San Jose and Santa Clara en route to San Francisco and Oakland, and that the order of the Interstate Commerce Commission of April 30, 1915, allows the rail carriers to charge a higher rate for a shorter haul, the shorter haul being included in the longer, contrary to the provisions of the fourth section of the act to regulate commerce.

San Jose and Santa Clara are manufacturing and distributing centers, and by reason of the fact that said cities have enjoyed terminal rates many industries and factories have been established at said points, and the growth and prosperity of said communities are dependent upon the fact that they have been designated as California terminals; that said cities come in active competition with San Francisco and Oakland, and that an increase in freight rates would add a burden to the operating expenses of the merchants and manufacturers of San Jose and Santa Clara which would prevent them from successfully meeting the competition in San Francisco and Oakland.

That the local rate from San Francisco to San Jose and Santa Clara is graded on a 7¢ per 110-pound scale. That San Jose and

82 Santa Clara receive each year over 90,000 tons of transcontinental freight brought in by the rail carriers. Increasing such freight charges to the extent of three-fourths of the local back haul from San Francisco on certain commodities and the full local on others would add a yearly burden to the mercantile bodies of San Jose and Santa Clara of something over \$100,000.00. That this increased burden would prevent the merchants of the two cities mentioned from successfully competing with San Francisco, would change the general character of business in said two cities from that of general manufacturing and wholesale to mere local transactions, would cause the destruction of the wholesale and manufacturing industries in said two cities, and would cause the merchants therein to suffer irreparable damage and injury.

That the cities of San Jose and Santa Clara are entitled to terminal rates by reason of water competition, which is the same circumstance and condition which entitles San Francisco and Oakland to be designated as terminals. The orders of the Interstate Commerce Commission and the tariffs filed by the rail carriers pursuant to such orders, wherein higher rates are charged on westbound transcontinental freight destined to San Jose and Santa Clara than are charged for like freight destined to San Francisco and Oakland, are discriminatory and unjust as to San Jose and Santa Clara and contrary to the provisions of the act to regulate commerce. Unless the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, and the tariff filed pursuant thereto by the rail carriers be suspended, the merchants, manufacturers, jobbers, and all commercial interests of the cities of San Jose and Santa Clara will suffer irreparable damage and injury.

83 Annexed hereto, marked Exhibits A and B, and to which reference is specially made, are schedules showing the amounts that the jobbers of San Jose and Santa Clara will have to pay over and above those paid by San Francisco jobbers on various commodities shipped to and sold in competitive territory under the tariff, supplement No. 16 to Transcontinental Freight Bureau Westbound Tariff No. 1-N, I. C. C. No. 996, of R. H. Countiss, filed with the Interstate Commerce Commission by the rail carriers pursuant to the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, set forth in the petition filed herein. Reference to said tariff is hereby specially made and the same is made a part hereof by reference.

Wherefore, affiant prays that said orders and the tariff filed thereunder be suspended until after a final determination of the above case.

W. D. WALL.

Subscribed and sworn to before me this 22nd day of July, 1915.

[SEAL.]

FLORA HALL,

*Notary Public in and for the City and County of
San Francisco, State of California.*

EXHIBIT A.

Statement of rates effective July 15, 1915, in supplement No. 16 to Transcontinental Freight Bureau Westbound Tariff 1-N, Interstate Commerce Commission No. 996, of R. H. Countiss, agt., showing transcontinental carload commodity rates to San Francisco, Cal., and San Jose, Cal., together with total freight rates when distributed in less-than-carload lots through those points to various destinations shown.

Item No.	From group—	C/L commodity rate in cents per 100 lbs.		Distributed to—					
				Hayward, Cal., at C/L rate plus L. C. L. rate in cts. per 100 lbs.		San Luis Obispo, Cal., at C/L rate plus L. C. L. rate in cts. per 100 lbs.		Fresno, Cal., at C/L rate plus L. C. L. rate in cts. per 100 lbs.	
		To S. F.	To S. J.	Thru S. F.	Thru S. J.	Thru S. F.	Thru S. J.	Thru S. F.	Thru S. J.
1088-B.....	A	75	79	81	85	110	114	100	113
1082-A.....	B	85	89	91	95	127	131	123	127
1172-A.....	B	75	79	81	85	112	116	100	113
1178-A.....	B	75	79	81	85	112	116	100	113
1182-A.....	B	75	79	81	85	112	116	100	113
1196-A.....	B	75	79	81	85	112	116	100	113
1200-A.....	B	65	69	71	75	102	106	90	103
1211.....	B	65	69	71	75	102	106	90	103
1217.....	B	75	79	81	85	112	116	100	113
1222-A.....	B	75	79	81	85	112	116	100	113
1244-A.....	A	75	79	81	85	112	116	100	113
1272-A.....	D	80	84	86	90	128	132	126	130
1302-A.....	A	80	84	86	90	117	121	114	118
1306-A.....	A	75	79	81	85	112	116	100	113
1318-I.....	A	75	79	81	85	117	121	113	117
1328-A.....	A	75	79	81	85	112	116	100	113
1332-A.....	A	75	79	81	85	117	121	113	117
1336-A.....	A	75	79	81	85	112	116	100	113

NOTE.—In figuring the less-than-carload distributive rate from San Francisco and San Jose on shipments moving into those points in mixed carloads, we have used the rate under which the majority of such goods will be distributed.

On the following items enumerated in tariff above shown, covering movement into San Francisco under mixed carload rates, no provision is made under class arbitrary to be used for application of carload rate on such shipments when destined San Jose, necessitating either the application of the intermediate rate or the less-than-carload rate from San Francisco to San Jose on a large number of the commodities included in the car: Items 1142-A, 1250-A, 1254-A, 1257, 1264-C, 1266-B.

Arbitraries used, San Francisco to San Jose: As carried in supplement 16 to Transcontinental Freight Bureau Tariff 1-N, I. C. C. 966, of R. H. Countiss, agent. Also Southern Pacific Co. Local Freight Tariff 711, I. C. C. 3543.

Less-than-carload distributive rates used: Southern Pacific Company Local Freight Tariff No. 711, I. C. C. 3543.

EXHIBIT B.

Statement of rates effective August 15, 1915, in Transcontinental Freight Bureau Westbound Tariff 1-N and as supplemented, Interstate Commerce Commission No. 996, of R. H. Countiss, agt., showing transcontinental carload commodity rates to San Francisco, Cal., and San Jose, Cal., together with total freight rates when distributed in less-than-carload lots through those points to various destinations shown.

Item No.	From group—	C/L commodity rate in cents per 100 lbs.		Distributed to—					
				Hayward, Cal., at C/L rate plus L. C. L. rate in cts. per 100 lbs.		San Luis Obispo, Cal., at C/L rate plus L. C. L. rate in cts. per 100 lbs.		Fresno, Cal., at C/L rate plus L. C. L. rate in cts. per 100 lbs.	
		To S. F.	To S. J.	Thru S. F.	Thru S. J.	Thru S. F.	Thru S. J.	Thru S. F.	Thru S. J.
210.....	D	125	130	131	136	167½	172½	163	168
224-A.....	D	135	141	141	147	183½	189½	181	187
234.....	A	120	126	126	132	162½	168½	158	164
244.....	A	250	257	260½	267½	340	347	329½	336½
263.....	A	75	80	81	86	117½	122½	113	118
266.....	A	135	141	141	147	183½	189½	181	187
400.....	A	115	120	121	126	152½	157½	149	154
513.....	A	90	95	96	101	127½	132½	124	129
786.....	A	180	186	187	193	240	246	233	239
910.....	A	120	126	126	132	168½	174½	166	172
938-A.....	A	130	135	137	142	190	195	183	188
1060.....	A	130	136	136	142	190½	204½	196	202

NOTE.—In figuring the less-than-carload distributive rate from San Francisco and San Jose on shipments moving into those points in mixed carloads, we have used the rate under which the majority of such goods will be distributed.

On the following items enumerated in tariff above shown, covering movement into San Francisco under mixed carload rates, no provision is made under class arbitrary to be used for application of carload rate on such shipments when destined San Jose, necessitating either the application of the intermediate rate or the less-than-carload rate from San Francisco to San Jose on a large number of the commodities included in the car: Item 292, item 378, and item 660.

Arbitrary used, San Francisco to San Jose: Rates carried in Southern Pacific Company Local Freight Tariff 711, I. C. C. No. 3543.

Less-than-carload distributive rates used: Rates carried in Southern Pacific Company Local Freight Tariff 711, I. C. C. 3543.

(Endorsed): Filed Jul. 23, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

86 United States of America. District Court of the United States, Northern District of California, second division. In equity.

The President of the United States of America, greeting:

To United States of America, Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad

Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company—

You are hereby commanded that you be and appear in said district court of the United States, second division, aforesaid, at the court room in San Francisco, twenty days from the date hereof, to answer a bill of complaint exhibited against you in said court by Merchants' and Manufacturers' Traffic Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and city of Santa Clara, and to do and receive what the said court shall have considered in that behalf.

Witness the honorable William C. Van Fleet, judge of said district court, this 10th day of July, in the year of our Lord one thousand nine hundred and fifteen and of our independence the 140th.

[SEAL.]

WALTER B. MALING,
Clerk.

By J. A. SCHAEPTZER,
Deputy Clerk.

Memorandum pursuant to rule 12, Rules of Practice for the Courts of Equity of the United States.

You are hereby required to file your answer or other defense in the above suit on or before the twentieth day after service, excluding the day thereof, of this subpoena at the clerk's office of said court, pursuant to said bill, otherwise the said bill may be taken pro confesso.

WALTER B. MALING,
Clerk.

By J. A. SCHAEPTZER,
Deputy Clerk.

(Indorsed :) No. 191, equity. U. S. District Court, Northern District of California, second division. In equity. Merchants' and Manufacturers' Traffic Assn. of Sacramento et al., vs. United States of America et al. Subpoena ad respondendum.

87 UNITED STATES MARSHAL'S OFFICE,
Northern District of California.

I hereby certify that I received the within writ on the 14th day of July, 1915, and personally served the same on the same day on the Southern Pacific Company, a foreign corporation, by handing to and leaving with E. A. Van Wynen, who is the person designated under the statutes of California as the person upon whom all legal processes are to be served in matters concerning the Southern Pacific Company, a corporation in the State of California, a true and a attested copy thereof, in the city and county of San Francisco in said district.

Dated San Francisco, July 14th, 1915.

J. B. HOUGHAN,
United States Marshal.

By [signed] THOS. F. MULHALL,
Office Deputy.

Return on service of writ.

UNITED STATES OF AMERICA,
Northern District of California, ss:

I hereby certify and return that I served the annexed subpoena ad respondendum on the therein-named Western Pacific Railroad Company by handing to and leaving a true and attested copy thereof with Warren Olney, one of the receivers appointed by the United States court as receiver for the said Western Pacific Railroad Company, personally at San Francisco, California, in said district, on the 23rd day of July, A. D. 1915.

J. B. HOLOHAN,
U. S. Marshal.

By [signed] I. W. GROVER,
Office Deputy.

88

Return on service of writ.

UNITED STATES OF AMERICA,
Sou. District of Cal., ss:

I hereby certify and return that I served the annexed attested copy of subpoena ad testificandum on the therein-named Atchison, Topeka & Santa Fe Railway Co. by handing to and leaving a true and correct copy thereof with G. Holderhoff, jr., asst. sec. of the Atchison, Topeka & Santa Fe Railway Co., authorized to accept service, personally, at Los Angeles, Cal., in said district, on the 23rd day of July, A. D. 1915.

C. T. WALTON,
U. S. Marshal.

By [signed] D. S. BASSETT,
Deputy.

Subscribed and sworn to before me this 23d day of July, 1915.

[SEAL.]

WM. M. VAN DYKE,

Clerk, U. S. District Court, Southern District of California,

By [signed] CHAS. N. WILLIAMS,
Deputy.

I hereby certify that I did on the 26th day of July, A. D. 1915, serve upon H. U. Mudge, receiver of the Chicago, Rock Island and Pacific Railway Company, one attested copy of subpoena ad testificandum in the case of the Merchants' and Manufacturers' Traffic Association of Sacramento et al, vs. United States of America et al., at Chicago, Illinois.

By [signed] JOHN J. BRADLEY,
U. S. Marshal,
 JOHN S. ROBERTS,
Deputy.

Subscribed and sworn to before me at Chicago, Illinois, this 26th day of July, A. D. 1915.

[SEAL.]

CHRIS. F. GUNTHER,
Notary Public.

My commission expires March 20th, 1919.

Marshal's fees: 1 service, .50; 1 mile, .06—.56.

89 UNITED STATES OF AMERICA,
District of Colorado, ss:

I hereby certify that on the 28th day of July, A. D. 1915, at Denver, in said district of Colorado, I duly served a subpoena issued out of the United States District Court for the Northern District of California, dated the 10th day of July, A. D. 1915, wherein the Merchants' and Manufacturers' Association of Sacramento et al. are plaintiffs and United States of America et al. are defendants, upon one of the defendants therein named, i. e., Denver & Rio Grande Railroad Company, by delivering to John B. Andrews, as assistant secretary of said company, a certified copy of said subpoena.

S. J. BURRES,
United States Marshal,
By [signed] T. J. McCLUER,
Deputy Marshal.

Fees & costs: \$2.00.

Subscribed and sworn to me this 29th day of July, A. D. 1915.

[SEAL.]

CHARLES W. BISHOP,
Clerk, United States Dist. Court.

MERCHANTS' AND MANUFACTURERS' TRAFFIC As-	}	No. 191, Equity.
sociation of Sacramento et al.		
<i>vs.</i>		
UNITED STATES OF AMERICA ET AL.		

I certify that I received on the 24th day of July, 1915, copy of a subpoena ad respondendum, issued on the 10th day of July, 1915, out of the United States Court, for the Northern District of California, second division, in case Merchants' and Manufacturers' Traffic Association of Sacramento et al. vs. United States of America et al., and served the same upon the Union Pacific Railroad Company, at Salt Lake City, in the district of Utah, on the 3rd day of August, 1915, by delivering the aforesaid copy to Joseph F. Smith, a director of the said Union Pacific Railroad Company, there being no officer of said Union Pacific Railroad Company of higher rank within the District of Utah upon whom service could be obtained.

AQUILA NEBEKER,
United States Marshal,
By [signed] L. H. SMYTH,
Chief Deputy.

Served copy of the within subpoena on the United States of America by personal service of same on Thomas W. Gregory, Attorney General of the United States, July 22, 1915.

Served copy of the within subpoena on the Interstate Commerce Commission by personal service of same on George B. McGinty, secretary of said commission, July 21, 1915.

[Signed] MAURICE SPLAIN,
U. S. Marshal, District of Columbia.

Endorsed: Filed Sept. 17, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

91 In Equity, No. 191. In the United States District Court, Northern District of California, Second Division.

MERCHANTS' & MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

v.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

Motion of the United States to dismiss the petition as amended.
Answer of the United States to the petition as amended.

92 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' & MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

v.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

In Equity, No. 191.

Motion of the United States to dismiss the petition as amended.

Comes now the United States of America, respondent, by its counsel, and moves the court to dismiss the petition as amended in the above-entitled cause at the cost of the petitioners.

93 As grounds for this motion it is shown:

1. The petition as amended, including the reports and orders of the Interstate Commerce Commission in the several proceedings referred to therein and made a part thereof, is without equity on its face and does not state any cause of action against the respondent, and the court may not grant the relief prayed or any part of the same.

2. The petitioners, Merchants' & Manufacturers' Traffic Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and city of Santa Clara, do not bring the suit as common carriers or as shippers, but they bring the suit in the public interest. They have no such interest in the said orders sought to be annulled and enjoined as would entitle them to maintain the suit, and they have not shown, or attempted to show, any irreparable injury, or any other injury whatsoever, to them, or to any of them, for or by reason of said orders, and they have no standing in a court of equity to maintain the said suit.

3. There is a misjoinder of parties and alleged causes of action in that the petitioners seek to maintain a cause of action in the public interest against the United States of America and at the same time they seek to maintain a cause of action in the public interest against Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company. The petitioners have thus confounded an attempted suit against the United States with an attempted suit against the carriers.

4. The said orders of the Interstate Commerce Commission sought to be annulled and enjoined were entered on applications of numerous common carriers for relief from the provisions of section 4 of the act to regulate commerce as amended, who alone had the authority to make and file such applications. The statute contains no provision that the petitioners may make applications for relief from the provisions of section 4, or that the Interstate Commerce Commission may grant such relief if so applied for. The petitioners had no standing to institute the proceedings before the commission, and they are equally without any standing to institute the proceedings before the court. The suit now commenced at the instance of the said petitioners is beyond the jurisdiction of the court to hear and determine, and the same should be dismissed for want of jurisdiction.

5. The reports and orders of the Interstate Commerce Commission were regularly made and entered after full hearings and on evidence adduced on issues made by the proper parties before the commission, and the petition as amended does not show any lack of power or authority on the part of the commission to make and enter the said orders now sought to be annulled and enjoined.

95 6. The petition as amended does not show that there is, or may be, any confiscation of property of petitioners, or that the petitioners have been deprived of any right protected by

the Constitution of the United States, or of any other right within the jurisdiction of the court to protect.

7. The petition as amended is otherwise vague, uncertain, indefinite, and insufficient.

Wherefore, respondent prays that its said motion be sustained.

Answer of the United States to the petition as amended.

Comes now the United States of America, respondent, by its counsel, not waiving its motion to dismiss the petition as amended herein, but insisting upon the said motion now and at all times hereafter, and for answer to the petition as amended (hereinafter referred to as the petition), says:

I, II, III, IV, V, VI, VII, VIII, IX, and X. It admits that Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company are common carriers subject to the act to regulate commerce and the various and sundry acts amendatory thereof and supplementary thereto. As to the remaining allegations of paragraphs I to X, it has no knowledge of the matters and things alleged therein, except as may hereinafter appear in paragraph 27 of this answer, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

96 XI. Subject to verification, it admits that the Interstate Commerce Commission made the findings and entered the order referred to as Exhibits A and B to the petition. With that exception, it has no knowledge, except as may hereinafter appear in paragraph 27 of this answer, of the matters and things alleged in paragraph XI, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XII. It denies that the Sacramento River is a navigable waterway during the greater part of the year, or during any part of the year, for deep-draft ocean-going vessels with full cargoes, or that such vessels have docked within the limits of that city. As to the other matters and things alleged in said paragraph XII, it has no knowledge, except as may hereinafter appear in paragraph 27 of this answer, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XIII. It denies that the San Joaquin River is a navigable waterway accessible to deep-draft vessels during the greater portion of the year or during any portion of the year. As to the other matters and things alleged in said paragraph XIII it has no knowledge, except as may hereinafter appear in paragraph 27 of this answer, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XIV. It has no knowledge, except as may hereinafter appear in paragraph 27 of this answer, of the matters and things alleged in paragraph XIV of the petition, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XV. It denies that Alviso is accessible at all times of the year or at any time of the year to boats of deep draft. As to the other matters and things alleged in paragraph XV it has no knowledge, except as may hereinafter appear in paragraph 27 of this answer, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XVI. It denies that San Jose, Santa Clara, Sacramento, and Stockton were and are entitled to terminal rates in manner and form as alleged. As to the other matters and things alleged in said paragraph XVI it has no knowledge, except as may hereinafter appear in paragraph 27 of this answer, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XVII. It admits that the local rate from San Francisco to Sacramento is 24 cents per hundred pounds, but it alleges that said rate of 24 cents is the first-class rate, and is the lowest first-class rate for a haul of 90 miles in the United States. The schedule C commodities do not move on the said first-class rate, but on a much lower rate, and the illustration of the scale of rates referred to in paragraph XVII and the alleged losses consequent therefrom are misleading. Accordingly, and except as hereinafter appears in paragraph 27 of this answer, respondent denies the allegations contained in paragraph XVII and each and every part of the same.

XVIII. It denies that no changed conditions now exist or at any time have existed to cause the rail carriers to withdraw their terminal rates from the four cities mentioned or to increase the rates to said points. It denies that an increase of rates by the rail carriers to the four cities mentioned will be contrary to the provisions of section 4. As to the matters and things set forth in the remaining allegations of paragraph XVIII respondent has no knowledge, and it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XIX. It admits the filing of the complaint of Santa Rosa Traffic Association before the Interstate Commerce Commission and the order of January 5, 1914. It also admits the order of the commission of December 29, 1914, referred to in the petition. Because of the fragmentary manner in which the petitioners refer to the said reports and orders, the allegations of the petitioners with respect thereto are misleading, and respondent denies the said allegations and each and every part of the same. For the true facts with reference to said hearings and the said reports and orders, respondent refers to the report of the Interstate Commerce Commission in *Santa Rosa Traffic Association v. Southern Pacific Company et al.*, 24 Interstate

87 Commerce Commission Reports, 46, made June 4, 1912; the report and order of the Interstate Commerce Commission on rehearing in *Santa Rosa Traffic Association v. Southern Pacific Company et al.*, 29 Interstate Commerce Commission Reports, 65, made and entered January 5, 1915; and *San Jose Chamber of Commerce et al. v. Atchison, Topeka & Santa Fe Railroad Company et al.*, 32 Interstate Commerce Commission Reports, 449; also known as *I. & S. Docket No. 405, Transcontinental Commodity Rates to San Jose, Santa Clara, and Marysville, California*, made and entered December 29, 1914, copies of which reports and orders will be filed upon the hearing hereof. The said reports and orders should be considered together and not in a fragmentary manner and separately, as the petitioners seek to present them. Respondent points out that in the last of the said reports the commission expressly found that "the matter of the extension of terminal commodity rates to interior California points is under consideration by the commission on carriers' Fourth Section Applications Nos. 205, etc., and will be disposed of there." The said applications thus referred to are the applications upon which the commission entered the orders now sought to be annulled and enjoined, all of which the petitioners then and there well knew.

XX. It neither admits nor denies the matters and things alleged in Paragraph XX of the petition in manner and form as alleged, but in so far as the said matters and things, or any of them, may be 100 or may become, relevant and material, it refers to the report of the Interstate Commerce Commission in *Railroad Commission of Nevada v. Southern Pacific Company et al.*, 19 Interstate Commerce Commission Reports, pages 238 to 256, inclusive, and the supplemental report and order in *Railroad Commission of Nevada v. Southern Pacific Company et al.*, 21 Interstate Commerce Commission Reports, pages 329 to 384, otherwise known as "Applications for relief under the fourth section: Nos. 205, 342, 343, 344, 349, 350, and 352," certified copies of which reports and orders will be produced and filed upon the hearing hereof.

XXI. It admits that the carriers filed applications, known as Fourth Section Applications Nos. 205, etc., with the Interstate Commerce Commission for permission to file tariffs wherein lower rates would be charged on certain transcontinental westbound commodities. It alleges that said applications were made under the provisions of section 4 of the act to regulate commerce, as amended, and that no duty was imposed upon the commission to issue and serve specific notice of any hearing or hearings on said applications to the unknown and numberless persons, firms, corporations, traffic bureaus, associations, points of shipment, destinations of shipments, municipalities, governments, and the general public, who might then or thereafter be or become interested in any rates which may be fixed. It admits that the commission held the hearing beginning October 6, 1914, at Chicago, Illinois.

101 It specifically denies the allegation that "no notice of said hearing was given to any of the four cities above mentioned or

to any of the mercantile concerns or associations therein, nor were any of them brought in or made parties to said proceeding." On the contrary, respondent is informed and believes, and on such information and belief it charges as a fact, that one G. J. Bradley, then, as now, traffic manager of Merchants & Manufacturers' Traffic Association of Sacramento, who verified the petition and filed an affidavit herein on behalf of all of the petitioners, was present in the United States court room, Chicago, Illinois, on October 6, 1914, and subsequent days, before Examiner Henry A. Thurtell, of the Interstate Commerce Commission, who conducted the hearings on Fourth Section Applications Nos. 205, etc., at said time and place; and that the said G. J. Bradley was not only present at said time and place, but he then and there in writing entered his appearance for the parties represented by him, including the Merchants & Manufacturers' Traffic Association of Sacramento. Subsequently, on November 23, 1914, the oral arguments on the law and the evidence on said Fourth Section Applications Nos. 205, etc., were held in the hearing room of the Interstate Commerce Commission, and the supplemental report and amended order, referred to in the petition, were filed and entered January 29, 1915. Subsequently, and within the time prescribed by the said supplemental report
102 of January 29, 1915, the carriers submitted the plan for the adjustment of rates to back-haul points. Subsequently, on April 12-13, 1915, the oral arguments on the law and the evidence on said Fourth Section Applications Nos. 205, etc., were again held in the hearing room of the Interstate Commerce Commission at Washington, D. C., in the light of the said plan submitted. On April 12, 1915, the said same G. J. Bradley, representing the cities of Sacramento and Stockton, California, and who verified the petition and filed an affidavit herein on behalf of all of the petitioners, appeared at said time and place and orally addressed the Interstate Commerce Commission on behalf of the said two cities. At no time during the said hearing of April 12-13, 1915, which was the last hearing held on said Fourth Section Applications Nos. 205, etc., either on the oral argument or otherwise, though full opportunity was presented to do so, did the said cities of Sacramento and Stockton, represented by the said G. J. Bradley aforesaid, make any complaint to the Interstate Commerce Commission of any lack of opportunity to be heard or of any lack of notice or knowledge of the proceedings in which they were actively participating.

Respondent alleges that at no time during all of the said hearings did the petitioners herein, or any of them, ever make any objection or complaint of any lack of notice or irregularity in the procedure thereof; on the contrary, they were at all times satisfied therewith. Inasmuch as the said cities named, and each of
103 them, through their representatives, were cognizant at all times of the said proceedings, if they failed to appear, or to adduce sufficient evidence, or adequately to represent themselves, they are now estopped to challenge the validity of the said orders or

either of them for or by reason of their own laches, and, respondent alleges that, by reason thereof, the said petitioners, and each of them, are now estopped to challenge the validity of the said orders for or by reason of any matter or thing alleged in the petition.

XXII. It denies that San Jose, Santa Clara, Sacramento, and Stockton were either necessary or proper parties to the said proceeding. It alleges that, as hereinbefore shown, the said cities, or some of them, were represented at all of said hearings, were fully heard, and they had full opportunity to be further heard had they so desired. It further alleges that all of the hearings on Fourth Section Applications Nos. 205, etc., were full, adequate, and complete, and were in all respects in accordance with the terms and provisions of the act to regulate commerce and not in any respect in violation thereof. Respondent alleges that as far back as April 1, 1911, when Fourth Section Applications Nos. 205, etc., were pending and being heard before the Interstate Commerce Commission, the said G. J. Bradley, representing the cities of Sacramento and Stockton, California, appeared in the public hearing room of the commission at Washington, D. C., at a hearing duly fixed by the commission, and orally argued on behalf of the said two
104 cities their relations to the said applications. Subsequently on or about June 21, 1911, the said G. J. Bradley, representing the said two cities aforesaid, filed with the Interstate Commerce Commission an elaborate brief of many printed pages, covering the same subject matter wherein, inter alia, on behalf of the said two cities he said:

"The carriers have presented their testimony and have argued the case at length, both orally and by brief, and this question is now before your honorable body for decision.

* * * * *

"In the short time allotted to me at the Washington hearing I attempted to show to the commission that the questions under consideration were the rates and conditions of to-day, and that the present competition was the controlling factor in the rail rates.

* * * * *

"The early history of California shows that seagoing vessels came to Sacramento direct from Atlantic ports. It would be idle for us to say to this commission that vessels of the present size and draft, plying between San Francisco and Atlantic ports, could reach Sacramento, or that they ever could have done so, but it must be remembered that fifty years ago no such vessels were sailing the seas as now."

Respondent denies that the said four cities named were arbitrarily designated as back-haul points, and it denies each and every other allegation in the said paragraph XXII contained not herein specifically admitted or denied.

105 XXIII. It denies that the suggestion of the Interstate Commerce Commission referred to in paragraph XXIII was

not based on any evidence, and it denies that the commission by its decision and order of April 30, 1915, arbitrarily fixed the rate, and it denies that the decision and order, if allowed to stand, will be unjust and discriminatory against receivers and shippers of freight represented by petitioners, and will cause them irreparable damage and injury. It denies that the said order unjustly affects the petitioners and deprives them of rights without representation and takes from them property without due process of law, or denies to them the equal protection of the law.

XXIV. It admits the rail carriers have prepared and filed certain tariffs as a compliance with the terms and provisions of said order of April 30, 1915. It denies that rates to said cities for Commodity Schedule A from Chicago points, Buffalo-Pittsburgh points, and the Atlantic seaboard will be 7 per cent, 15 per cent, and 25 per cent in excess of the terminal rates. On the contrary, it alleges that rates for Commodity Schedule A, without exception, are based and fixed solely on the hard-and-fast long-and-short-haul clause, as provided by section 4, as amended, without relief therefrom by the commission. Respondent alleges that the matters and things alleged in paragraph XXIV, in manner and form as alleged, are inaccurate, incorrect, and misleading, and respondent denies the same, in manner and form as alleged, and each and every part of the same.

106 XXV. It denies the allegation of paragraph XXV, that the commission arbitrarily ordered San Jose, Santa Clara, Sacramento, and Stockton to be stricken from the list of California terminals. Subject to verification, it admits the excerpt from the report of the commission, but it alleges that for the matters and things therein contained the said report should not be considered in a fragmentary manner but should be considered in its entirety. It denies that the action of the commission unjustly discriminates against the four complaining cities, with the result of unsettling business conditions and causing irreparable damage and injury to the business interests of the four cities mentioned. As to the remaining allegations of said paragraph XXV, it neither admits nor denies the same, and if the same become material upon the hearing it will require strict proof thereof.

XXVa. While it denies that the petitioners, or either or any of them, were either necessary or proper parties to the proceeding before the Interstate Commerce Commission in fourth section applications Nos. 205, etc., it admits that the petitioners filed what purported to be and what was designated by them as a petition for rehearing, and notice of denial was given. It specifically denies that the petitioners were ever denied any opportunity to be heard if and when they were entitled to be heard. It denies each and every other allegation in the said paragraph XXVa contained in manner and form as alleged.

107 XXVb. If, during the times mentioned, the rail carriers extended terminal rates to the four cities mentioned because of

water competition, it denies that there are no changed conditions to justify any increase in such freight rates or to justify the order of the Interstate Commerce Commission authorizing rail carriers to increase their charges on such freight destined to the four cities mentioned. As to the other matters and things alleged in said Paragraph XXVb, it denies the same in manner and form as alleged, and each and every part of the same.

XXVI. It denies that the orders of the Interstate Commerce Commission are contrary to law and equity, are discriminatory and unjust, or were made without said cities having their day in court, or without giving them an opportunity to show the unreasonableness thereof. It denies that no justification for the increase of rates was shown, and it denies that the order of April 30, 1915, was without evidence and warrant of law. It denies that the petitioners have been denied the equal protection of the law and deprived of property without due process of law to their irreparable damage and injury. It denies that unless the enforcement of the said orders be stayed that great and irreparable damage and injury will result to the petitioners.

XXVII. Further answering the said petition, and each and every part of the same, respondent alleges that after section 4 of the act to regulate commerce of February 4, 1887, was amended on June 18, 1910, the carriers filed their fourth section applications Nos. 205, 342, 343, 349, 350, and 352, for relief from the provisions of said section 4, as amended, and after full hearings the Interstate Commerce Commission filed its reports, 21 Interstate Commerce Commission Reports, 329, to which reference is made, and 21 Interstate Commerce Commission Reports, 400, to which reference is made, in pursuance of which said two reports the commission also entered its order. Subsequently, the said order was annulled and enjoined by the judgment of the United States Commerce Court, Atchison, Topeka & Santa Fe Railway Co. v. United States, 191 Fed. Rep., 856, and on appeal the judgment was reversed by the Supreme Court of the United States, and the said order was in all respects sustained in Intermountain Rate cases, 234 U. S., 476, to which reference is made. Thereupon the carriers undertook to and did in part comply with the provisions of the said order, but filed further applications for further relief from the provisions of said section 4 as amended. Other hearings were had, and on January 29, 1915, the Interstate Commerce Commission filed its supplemental report, 32 Interstate Commerce Commission Reports, 611, and an amended fourth section order in which the entire subject matter referred to in the petition was fully considered, and which are referred to in the petition, a certified copy of which said supplemental report and amended order will be produced upon the hearing hereof, and it is prayed that the same may be taken and considered as if fully set out herein.

109 Acting upon the request of the Interstate Commerce Commission, the carriers, within the time prescribed by the said supplemental report of January 29, 1915, submitted the plan for

the adjustment of rates to the back-haul points. Other hearings were then held, after due notice given, and on April 30, 1915, the Interstate Commerce Commission filed its second supplemental report, 34 Interstate Commerce Commission Reports, 13, and entered its second amended fourth section order, which are referred to in the petition, a certified copy of which said second supplemental report and of said second amended order will be produced and filed upon the hearing hereof, and it is prayed that the same may be read and considered as if fully set out herein.

Respondent further alleges that all of the class rates to coast terminal points, on transcontinental westbound traffic, without exception, are based and fixed solely on the hard and fast long and short haul clause, as provided by section 4, as amended, without relief therefrom by the commission.

Commodities, for the purpose of transcontinental westbound rate making, were grouped into three schedules, viz, A, B, and C. Rates for commodity schedule A, like all class rates, without exception, are based and fixed solely on the hard and fast long and short haul clause, as provided by section 4, as amended, without relief therefrom by the commission. Rates for commodity schedule B, without exception, are based and fixed solely on the order of the
110 commission, of date July 31, 1911, fixing zones and percentages, sustained in Intermountain Rate cases, 234 U. S., 476, and fully set out in the report of the commission of January 29, 1915. Rates for commodity schedule C are the rates fixed by the Interstate Commerce Commission in the order of April 30, 1915, which order, in so far as the same applies to them, the petitioners now seek to annul and enjoin. The order of the commission in the instant case is finis of coast terminal rate adjustments under fourth section applications Nos. 205, etc. All of the coast terminal rates fixed by the commission in all of the adjustments under section 4, as amended, have been accepted by the carriers and the public without protest, except the four cities named as to the last adjustment, throughout the entire shipping and transportation world. Any disturbance of the said order, at the instance of the said cities, may imperil the entire transcontinental westbound rate structure fixing coast terminal rates and adjustments in all of the proceedings aforesaid.

XXVIII. It alleges that the matters and things alleged in the petition, and sought to be put in issue, were all before the Interstate Commerce Commission, and were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the act to regulate commerce. In its several reports in writing with respect thereto, made after full hearings and due notice to all of the parties who were entitled to the same, which
state its conclusions, together with its decisions, orders, or
111 requirements in the premises, the matters and things of which complaint is now made were fully considered and foreclosed

by findings of fact, based on substantial evidence adduced on the issues made by the parties.

XXIX. Further answering the said petition, and each and every part of the same, in so far as it has not heretofore been admitted, denied, or otherwise traversed, it denies—

(a) Any fact or facts alleged in said petition, or any part of the same, which deny, or which seek to deny, any fact or facts found by the Interstate Commerce Commission in its said reports and orders.

(b) Any fact or facts alleged in said petition, or any part of the same, which are inconsistent with any fact or facts found by the Interstate Commerce Commission in its said reports and orders.

(c) Any and all inferences of fact from any particular fact or facts alleged in the said petition, or any part of the same, which seek to deny, or which are inconsistent with, any fact or facts found by the Interstate Commerce Commission in its said reports and orders.

(d) Any fact or facts alleged in said petition, or any part of the same, which set up, or which seek to set up, matters and things which were not before the Interstate Commerce Commission.

(e) Any fact or facts alleged in said petition, or any part of the same, which attack or which seek to attack the reports and orders of the Interstate Commerce Commission, and to show facts
112 other than what the said reports and orders show on the face thereof.

(f) Any allegations in said petition, or any part of the same, which allege that facts were found by the Interstate Commerce Commission in its said reports and orders which, as shown on the face thereof, in fact were not so found.

(g) Any conclusions of law alleged and insisted upon in the said petition, or any part of the same, which are inconsistent with any conclusions of law held by the Interstate Commerce Commission in its said reports and orders.

(h) Each and every allegation in the said petition contained, not herein specifically admitted or denied.

Wherefore, having fully answered, respondent prays that the petition be dismissed at the cost of the petitioners, and for such other and further order as may be appropriate.

JOHN W. PRESTON,
United States Attorney,
Northern District of California, Second Division.
BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

Endorsed: Filed Aug. 11, 1915, W. B. Maling, clerk; by J. A. Schaertzer, deputy clerk.

113 In the United States District Court for the Northern District of California, Second Division.

MERCHANTS AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

In Equity,
No. 191.

Appearance of the Interstate Commerce Commission.

I hereby enter the appearance of the Interstate Commerce Commission and of myself as counsel in the above-entitled cause.

JOS. W. FOLK,

Counsel for the Interstate Commerce Commission.

Endorsed: Filed August 13, 1915. Walter B. Maling, clerk.

114 Equity No. 191. In the United States District Court for the Northern District of California, Second Division.

MERCHANTS AND MANUFACTURERS TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

Motion to dismiss and answer of the Interstate Commerce Commission. Joseph W. Folk, counsel for Interstate Commerce Commission.

115 In the United States District Court for the Northern District of California, second division.

MERCHANTS AND MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and city of Santa Clara, petitioners,

v.

In Equity, No. 191.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

Motion to dismiss and answer of the Interstate Commerce Commission.

Now comes the Interstate Commerce Commission and moves to dismiss the petition as amended herein for the following reasons:

116 (1) The petitioners complain of the refusal of this respondent to make an order or orders. Said nonaction of this respondent is not within the jurisdiction of this court to review. The only question that can be considered by the court is the validity of the orders that were made and not the validity or invalidity of orders that this respondent did not make.

(2) The court has no jurisdiction to make an order concerning railroad rates nor to direct the Interstate Commerce Commission to make an order. Rate-making questions are by the act to regulate commerce within the exclusive primary jurisdiction of the Interstate Commerce Commission. The court has power to pass upon the validity of the orders that were made, but it has no jurisdiction as to the legality of the orders the commission did not make and which it refused to make. The law gives the court power only to review the orders of the commission. The reasons of the commission for not making an order are manifestly beyond the competency of any court to examine. The jurisdiction of the court is confined to passing upon the validity of the orders actually made, and it has no warrant of law to go beyond that.

(3) Because certain cities are not included in the orders, which petitioners allege should have been included, petitioners seek to annul the orders that were made and render them void as to those cities that are included. Whatever the rights of petitioners, they can not go to the extent of destroying the rights of those named in the
117 orders. The petitioners are asking the court to make orders which the commission has declined to make and to annul orders

made by the commission because the commission would not make different orders which petitioners claim it should have made. The petitioners challenge as invalid not what the commission has done but what it has declined to do, and this court is asked to assume with reference thereto administrative functions expressly and exclusively delegated to the Interstate Commerce Commission by the act to regulate commerce.

(4) The petition as amended shows that the orders complained of are under section 4 of the act to regulate commerce. This section refers exclusively to carriers and deals with a rate-making problem only. Prior to the amendment of 1910 the carrier initiated the rate without action by the commission. As amended the consent of the commission is a prerequisite; but there is no provision in that section for trying out controversies between cities or localities. Petitioners are not parties to the orders made by the commission under section 4 nor were they necessary parties before the commission. The carriers asked permission of the commission to depart from the fourth section which under the authority given in the fourth section was granted by the commission as to certain cities. The act to regulate commerce does not require that all or any cities and localities to be affected by the proposed rates should be made parties in the proceedings before the commission. If it is claimed that the rates

118 authorized operate unfavorably to any city or any locality, there is a remedy provided in other sections of the act which allows cities and localities to file complaints with the commission and have their controversies tried out in regular hearings. Under the act to regulate commerce the petitioners herein must present their complaint to the commission, and the court has no primary jurisdiction to hear such controversies. The petitioners must, as required by the act to regulate commerce, first go before the commission, and until the commission has acted the court has no jurisdiction in the premises. Petitioners have no standing in court to ask an injunction against an order conferring a right upon the carriers under section 4.

(5) The petitioners ask the court to restrain the operation of tariffs filed by the carriers in accordance with the orders made by the Interstate Commerce Commission. An injunction against the orders can not prevent the tariffs already filed under the provisions of section 6 going into effect. No change can be made in the tariffs by the carriers under section 6 without due notice. The court has no more power to change the tariffs filed than the carriers have.

(6) Under section 4 of the act to regulate commerce the discretion as to the relief can be exercised only by the commission, and the determination of questions of fact as to similarity of circumstances and localities is exclusively within the jurisdiction of the commission.

119 (7) The reports and orders of the commission were regularly made and entered after full hearing and on evidence adduced on issues made by the proper parties before the commis-

sion, and said orders being based upon substantial evidence are final and beyond the competency of a court to review.

(8) The court can not by injunction or otherwise change a rate or make a rate or alter an order made by the commission as petitioners in this case ask the court to do.

(9) This respondent had full jurisdiction under the act to regulate commerce to enter the orders referred to in the petition, and said orders being based upon substantial evidence are valid exercises of the discretion conferred upon this respondent by the act to regulate commerce.

Wherefore respondent prays that the petition as amended be dismissed.

Answer of the Interstate Commerce Commission to the petition as amended.

The Interstate Commerce Commission having entered its appearance, in the above-entitled cause as a respondent, now and at all times saving to itself all benefit and advantage of exceptions to the petition as amended (hereafter referred to as the petition) for answer thereunto or to so much or such parts thereof as this respondent is advised it is material to make answer, answering says:

I.

120 This respondent admits the organization of the several respondent railroads, and that they are and each of them is engaged in interstate commerce and each has filed tariffs with this respondent. This respondent admits, so far as the allegations may be material and so far as they do not contradict or seek to contradict and are not inconsistent with any fact or facts found by this respondent in its reports and orders, the allegations of paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the petition, and respondent denies each statement in said paragraphs of the petition inconsistent with or that may contradict or seek to contradict any fact or facts found by this respondent in its reports and orders hereinafter referred to and made exhibits of this answer.

II.

This respondent denies that the Sacramento River is a navigable waterway during the greater part of the year or during any part of the year for deep-draft, ocean-going vessels with full cargoes. Respondent states that ocean-going vessels do not dock at Sacramento. Respondent states, as shown by its report, that ocean-going vessels deliver freight destined to Sacramento at the port of San Francisco, and that such freight is transferred by rail or local water carrier from San Francisco to Sacramento.

III.

Respondent denies that the San Joaquin River is a navigable waterway accessible to deep-draft vessels during the greater portion of the year or during any portion of the year. Respondent states, as shown by its report, that ocean-going vessels do not deliver their freight at Stockton by going up the San Joaquin River, but that such freight for Stockton is delivered at San Francisco and transported from San Francisco to Stockton by rail or local water carrier.

IV.

Answering paragraphs 14 and 15 of the petition, respondent states, as shown by its report, that ocean-going vessels do not deliver their freight at San Jose or Santa Clara, but that such freight destined to these points is delivered at San Francisco and transported to San Jose and Santa Clara from San Francisco by rail or local water carrier. Respondent states further that there was no testimony in the record before this respondent to show that the Atlantic steamship lines delivered any freight whatever to the town of Alviso.

V.

Answering paragraphs 16 and 17 this respondent denies that San Jose, Santa Clara, Sacramento, and Stockton are entitled to terminal rates in manner and form as alleged. Respondent states, as shown in the record before it and as set out in its several reports hereinafter referred to and made exhibits to this answer, the reason which in the past induced the rail carriers to make terminal rates to these four cities was the fact that the ocean carriers between the east and west coasts of the United States, in order to secure tonnage for their ships, formerly absorbed the inland locals from the port of San Francisco. The passage of the Panama Canal act and the opening of the Panama Canal caused the ocean carriers to discontinue absorbing the local rail rates, for by doing so the ocean carriers would, by the provisions of the Panama Canal act, subject themselves to the jurisdiction of the Interstate Commerce Commission and of the act to regulate commerce. This the ocean carriers, according to the record, desired to avoid in order to be free to change their rates at will and to make special contracts at different rates which they could not do if governed by the act to regulate commerce. The discontinuance of these absorptions changed the competitive conditions at San Jose, Sacramento, Santa Clara, and Stockton, which cities are not similarly situated as the terminal points named in the orders. Respondent further states that if Sacramento, Stockton, Santa Clara, and San Jose, though not as advantageously situated with reference to ocean rates as San Francisco, are entitled to the same railroad terminal rates as San Francisco, then many other cities

of California, Nevada, and other States would have as good a right to claim terminal rates, and the giving of terminal rates to Sacramento, Stockton, Santa Clara, and San Jose would result in a preference to these points so given terminal rates and, discrimination against other points just as much entitled to terminal rates by reason of location but not given such rates.

Further answering this, respondent admits that the local
123 rate from San Francisco to Sacramento is 24 cents per 100 pounds, but it states that said rate of 24 cents is a first-class rate and is one of the lowest first-class rates in the United States for a haul of 90 miles. Respondent states that schedule C commodities do not move on a first-class rate but on a lower rate, and as petitioners only complain as to schedule C, the scale of rates referred to in paragraph 17 and the alleged losses resulting therefrom are misleading. Respondent states that the new tariffs filed, of which petitioners complain, do not increase the rates to San Jose, Santa Clara, Sacramento, and Stockton as alleged in the petition, but, on the contrary, such rates with few exceptions are reduced as compared with what they formerly were. The complaint of petitioners appears to be because the rates to San Jose, Santa Clara, Sacramento, and Stockton were not reduced as much as were the rates to San Francisco differently situated. Respondent states that confiscation can not be predicated upon increased rates if such increased rates be reasonable, and that this respondent has not found the rates filed under its orders here in controversy to San Jose, Santa Clara, Sacramento, and Stockton to be unjust or unreasonable rates to those points.

VI.

Answering paragraph 18, respondent denies that no changed conditions exist or at any time have existed to cause the rail carriers to withdraw their terminal rates from San Jose, Santa Clara,
124 Sacramento, and Stockton. Respondent denies that an increase in rates by the rail carriers to the points mentioned would be contrary to the provisions of section 4.

VII.

Answering paragraph 19, this respondent admits the filing of the complaint by the Santa Rosa Traffic Association of Santa Rosa, Cal., before this respondent, alleging that it was being discriminated against in the matter of rates in that it was alleged to be similarly situated to San Jose, Santa Clara, and Marysville, and that those places were given terminal rates by the carriers which were denied to Santa Rosa. This respondent states that it made its order in said proceeding requiring the carriers so long as they applied terminal rates to San Jose, Santa Clara, and Marysville to apply no higher rates to Santa Rose.

Respondent further states that the carriers elected to remove the discrimination against Santa Rosa by withdrawing the application of terminal rates to San Jose, Santa Clara, and Marysville, and the carriers filed tariffs to become effective April 1, 1914, under which tariffs San Jose, Santa Clara, and Marysville were eliminated from the various lists of terminals in California. San Jose, Santa Clara, and Marysville then filed complaint before this respondent alleging that if the application of terminal rates to those points were withdrawn, these cities would be subjected to unjust discrimination

125 in favor of 182 other California points taking terminal rates.

This respondent found that the withdrawal of the terminal rates to San Jose, Santa Clara, and Marysville, while continuing such rates to other interior California points, would subject San Jose, Santa Clara, and Marysville to unjust discrimination, and the tariffs whereby these rates were proposed to be withdrawn were ordered canceled by this respondent. For the facts in reference to said hearings and said reports and orders respondent refers to its report in *Santa Rosa Traffic Association v. Southern Pacific Company et al.*, 24 I. C. C., 46, made June 4, 1912; the report and order of respondent on rehearing of said cause, 29 I. C. C., 65, made January 5, 1915; and *San Jose Chamber of Commerce et al. v. Atchison, T. & S. F. Ry. Co. et al.*, 32 I. C. C., 449, also known as I. & S. Docket No. 405, *Transcontinental Commodity Rates to San Jose, Santa Clara, and Marysville*, made and entered December 29, 1914. The proceeding above referred to brought by the San Jose Chamber of Commerce is known as No. 6717, and the copy of the report and order of this respondent will be filed on or before the hearing.

Respondent further states that the matter of extension of terminal rates to interior California points was then under consideration by this respondent, and, as was stated in respondent's report in the above-entitled cause, this respondent was then investigating with the view of determining what California cities were entitled to

126 terminal rates, said investigation being under an application of the carriers for relief under the fourth section and which investigation resulted in the orders of this respondent herein complained of whereby the carriers were given relief from the provisions of the fourth section as to San Diego, Wilmington, East Wilmington, San Pedro, East San Pedro, San Francisco, and Oakland, Cal.; Astoria and Portland, Oreg.; Bellingham, South Bellingham, Everett, Aberdeen, Hoquiam, Cosmopolis, Tacoma, and Seattle, Wash.; and this respondent found that the cities named were so situated as to be entitled to terminal rates.

VIII.

Answering paragraph 20 of the petition, this respondent admits the filing of complaint before it by the railroad commission of Nevada under which this respondent entered into an investigation of western freight charges to the intermountain country. Copies of its

opinions Nos. 1365 and 1623 in said matter will be produced and filed upon hearing hereof and are hereby made parts of this answer. Respondent denies that it determined in those cases that San Jose, Sacramento, and Stockton were entitled to terminal rates. Respondent states that in its reports and opinions in said matters it was merely describing the situation on the Pacific coast as then existing, and it was not passing upon the propriety of terminal rates at these different points.

127

IX.

Answering paragraph 21 of the petition, respondent admits that following the decisions and orders in the Intermountain Cases, known as Fourth Section Applications Nos. 205, etc., the rail carriers petitioned this respondent for permission to file new tariffs wherein lower rates would be charged on certain transcontinental westbound commodities, and that a hearing in said matter was had in Chicago beginning October 6, 1914. Respondent states that said proceeding was an application by the carriers for relief from the provisions of the fourth section, and that it was not necessary, and the act to regulate commerce did not require that all the cities and communities that might be affected by the rates should be made parties to said proceeding, but under other sections of the act any city desiring to complain of rates had a remedy given of coming before this respondent and having its rights determined.

Copies of the proceeding and final order referred to in paragraph 21 of the petition will be produced and filed upon hearing hereof and are hereby made parts of this answer.

This respondent denies each and every allegation in said paragraph 21 inconsistent with its findings and order aforesaid. Respondent states that the city of Sacramento, while not a necessary party to the proceeding above mentioned, was represented at 128 the hearing by G. J. Bradley, who entered his appearance at said hearing in behalf of the Merchants & Manufacturers Traffic Association of Sacramento. Said G. J. Bradley, representing the Merchants & Manufacturers Traffic Association of Sacramento, was present in the United States court room at Chicago, Ill., on October 6, 1914, and subsequent days before Examiner Henry A. Thurtell, who conducted the hearings on Fourth Section Applications Nos. 205, etc., at said time and place.

Respondent further states that on November 23, 1914, the oral arguments in said Nos. 205, etc., were held in the hearing room of the Interstate Commerce Commission. Subsequently, and within the time prescribed by said supplementary report of January 29, 1915, the carriers submitted a plan for the adjustment of rates to back-haul points. Subsequently, on April 12 and 13, 1915, further oral arguments on the law and evidence on said Fourth Section Applications Nos. 205, etc., were heard in the hearing room of the Interstate Commerce Commission at Washington, D. C. On April 12, 1915,

said G. J. Bradley, representing the cities of Sacramento and Stockton, appeared at said time and place and orally addressed this respondent in behalf of the cities of Sacramento and Stockton. This respondent states that at no time during the hearing of April 12 and 13, 1915, or at any other time, either in oral argument or otherwise, though full opportunity was presented to do so, did the said cities of Sacramento and Stockton, represented by said G. J.

129 Bradley aforesaid, make any complaint to this respondent of any lack of opportunity to be heard, or of any lack of notice and knowledge of the proceedings in which they were actively participating. Respondent states that at no time in all of said hearings did the petitioners, or any of them, ever make any objection to or complaint of any lack of notice or irregularity in the procedure thereof. On the contrary, the petitioners, through their representatives, were cognizant at all times of the proceedings and urged upon this respondent the adjustment of rates to back-haul points proposed by the carriers.

Respondent states that while under a fourth section application by carriers no notice to cities and communities is required, the petitioners had notice of such hearing and were represented at such hearing in whole or in part. Respondent states that the petitioners herein filed before this respondent a petition for rehearing. Said petition for rehearing filed in behalf of all the petitioners herein states on page 2:

"On April 12, 1915, a hearing was held in Washington, D. C., at which time the carriers presented to the commission a plan for the adjustment of these rates as directed; and at this hearing your petitioners were represented in whole or in part and urged upon the commission the adoption of the plan proposed; with the exception of San Francisco and the Railroad Commission of Nevada no objection was offered to the plan proposed."

130 Respondent therefore states that if notice of said proceeding were necessary to be given to the petitioners, which it was not under a fourth section application by the carriers, the denial by petitioners of knowledge of the hearing appears to be refuted by their own petition for rehearing.

X.

Answering paragraph 22 of the petition, respondent states that the act to regulate commerce does not require that cities affected by the proposed rates shall be made parties to the petitions by the carriers for relief under the fourth section. Respondent states that there is no duty imposed upon this respondent by the act to regulate commerce to give notice of hearings on fourth section applications to unknown and innumerable firms, corporations, traffic bureaus, municipalities, shippers, and the general public, who might then or thereafter be or become interested in any rates to be fixed. This respondent states, however, that Sacramento was represented at said

hearing which resulted in the order of January 29, 1915, by G. J. Bradley, who appeared for the Merchants & Manufacturers Association of Sacramento, as stated in the preceding paragraph of this answer. Respondent states that all of the petitioners were apprised of said hearing, and all of them urged upon this respondent the adoption of a schedule of rates to back-haul points proposed by the carriers and all of said petitioners were fully aware of the

131 proceedings. Respondent further states that there was abundant evidence to sustain the finding of respondent fixing the terminal points named in the orders complained of, and this respondent denies that Stockton, San Jose, Santa Clara, and Sacramento are surrounded by the same conditions and circumstances as are the terminals mentioned in the order. Respondent further states that the determination of these questions of fact is by the act to regulate commerce within the exclusive primary jurisdiction of this respondent. Respondent denies that the right to be designated as a California terminal and to receive westbound transcontinental freight at terminal rates was taken from the cities named without evidence or without due process of law, and respondent states that its findings and orders are based upon substantial evidence, and that there are abundant facts in the record to sustain its findings and orders as aforesaid. Respondent denies that petitioners have been denied the equal protection of the law, and respondent states that its findings and orders are in accordance with the facts and under and by virtue of the authority conferred upon this respondent by the act to regulate commerce. Respondent further states that discretion as to the relief under the fourth section is given by the act to regulate commerce to this respondent, and that the jurisdiction of the court is confined to passing upon the legality or illegality of orders made by this respondent, and the court has no power over

orders that this respondent did not make and refused to make.

132 Petitioners complain of the orders, not because they name the cities set out in the order as terminal points, but because they do not name Stockton, San Jose, Sacramento, and Santa Clara in addition to those named. The petitioners therefore challenge as invalid not what this respondent has done, but what it has not done, and this court is asked to assume with reference thereto administrative functions expressly and exclusively delegated to this respondent by the act to regulate commerce. Respondent denies each and every allegation in said paragraph 22 not herein specifically admitted or denied.

XI.

Answering paragraph 23, this respondent states that the hearing on April 12 was a continuance of the hearing held on October 6, 1914, which resulted in the report and order of January 29, 1915. Respondent states that the particular subject matter of this hearing as announced by this respondent was the matter of rates to intermediate points, which included San Jose, Santa Clara, Sacramento,

and Stockton. Respondent states that Sacramento was represented at this hearing, as at the former hearing, by G. J. Bradley. Respondent denies that its report in this case is contrary to the views expressed in its report of January 29, and this respondent refers to its reports and orders for accuracy and denies any statement in said petition contrary to or inconsistent with the statements in
133 said report and order of April 15, 1915, copies of which report and order will be produced and filed upon hearing hereof and are hereby made parts of this answer. This respondent, in its report of January 29, 1915, suggested two ways of constructing rates to intermediate points, and asked the carriers to submit a plan for the arrangement of these rates on one of the methods suggested. Respondent states that after a full hearing on April 12 and 13, 1915, it outlined a plan which in its judgment and under the authority given it by the act to regulate commerce seemed most clearly just and reasonable. Copies of said report and order of April 30, 1915, will be produced and filed upon hearing hereof, and are hereby made parts of this answer. This respondent denies that by its decision and order of April 30, 1915, it arbitrarily fixed the rate, and denies that the decision and order, if allowed to stand, will be unjust and discriminatory to the receivers and shippers of freight represented by petitioners, or that they will be caused irreparable damage and injury.

Respondent denies that the said orders are unduly discriminatory and deprive petitioners of rights without representation and take from them property without due process of law and deny to them the equal protection of the law.

XII.

Answering paragraph 24, this respondent admits that the rail carriers have prepared and filed their tariffs in compliance with
134 the terms and provisions of the said order of April 30, 1915.

Respondent denies that rates to said cities for commodity schedule A from Chicago points, Buffalo and Pittsburgh points, and the Atlantic seaboard will be 7 per cent, 15 per cent, and 25 per cent in excess of the terminal rates. On the contrary, it alleges that rates for commodity schedule A, without exception, are based and fixed solely on the long and short haul clause as provided by section 4, as amended, without relief therefrom by the commission. Respondent alleges that the matters set out in paragraph 24 are misleading, and respondent denies the same in manner and form as alleged and each and every part of the same.

XIII.

Answering paragraph 25, respondent states that the rates from all points east of the Missouri River to Pacific coast points are the same, and that if there is a 75-cent rate on any article from the Atlantic seaboard to the Pacific coast the carriers maintain from Buffalo, Chicago, and the Missouri River the same rate. This is in accordance

with the fourth section of the act to regulate commerce, which restrains a carrier from making a greater charge from an intermediate point than from a more distant point. Upon application this respondent may permit the departure from the fourth section, but in this instance the carriers have made no such application. The

135 application in this case, which resulted in the orders complained of, was for relief as to the points of destination, and there was no relief asked for as to points of origin. As to rates at points of destination the carriers did petition the respondent for authority to continue lower rates to the Pacific coast terminals and higher rates to intermediate points. Respondent, in prescribing the extent to which these carriers might be relieved, took into account the necessity and propriety of lower rates to the more distant points and examined into the relations between the rates established in the more distant and the higher rated intermediate points. Respondent denies it arbitrarily required that San Jose, Sacramento, Stockton, and Santa Clara should be stricken from the list of terminals. Respondent did require, however, and had a right to require, that the carriers should show at each point to which they asked to continue the lower rates the competitive necessity existing at such point which justified the lower rate thereto. Respondent states that no such competitive necessity was shown to exist at Sacramento, Santa Clara, San Jose, and Stockton. This competitive condition was shown to exist at San Francisco, Oakland, and certain other points. Respondent states that the excerpt from its opinion of January 29, 1915, set out in paragraph 25 of the answer, should be considered in connection with its report as an entirety. Respondent denies that by its action aforesaid it unjustly discriminated against petitioners. Respondent

136 states that irreparable damage and injury can not be predicated upon change of rates if the changed rates be reasonable, as respondent found the rates here in controversy to be.

XIII.

Answering paragraph 25a, respondent denies that the petitioners were ever denied an opportunity to be heard. Respondent states that petitioners had full opportunity to be heard, though petitioners were not required to be parties to the fourth section application filed by the carriers; and petitioners may, under section 13 of the act to regulate commerce, which specifically provides for such controversies, file their complaint before this respondent and have their case adjudicated. Respondent states that the petitioners filed a petition for rehearing before respondent, in which petition they alleged the petitioners were represented in whole or in part at the hearing before this respondent on April 12 and 13, 1915, and urged upon this respondent the adoption of the plan proposed by the carriers. Respondent states that said petition for rehearing was received by this respondent June 22, 1915, was duly considered, and denied June 26, 1915, and notice of the denial of the petition was served upon the parties June 30, 1915. Respondent further denies each and every allegation in said paragraph 25a in manner and form as alleged.

Answering paragraph 25b, petitioners are asking this court to take original jurisdiction of rate-making questions, and of contro-
137 versies between cities and localities over rates. The petition herein should have been filed before this respondent, and this court has no jurisdiction to consider the rate-making questions involved until this respondent has acted upon them.

Further answering paragraph 25b, this respondent denies that there are no changed conditions to justify the order of this respondent herein, and respondent states that the changed conditions have been fully set out in other paragraphs of this answer to which reference is hereto made. Respondent denies each and every allegation in said paragraph 25b not herein specifically admitted or denied.

Respondent denies that its said orders are contrary to law or discriminatory and unjust, or were made without the parties entitled to be heard having an opportunity to be heard, and it denies that no justification for increase of rates was shown, and states that its said orders are based upon substantial evidence, and are fully warranted by law.

Further answering, respondent states that rates to the Pacific coast, and what cities on the Pacific coast are entitled to terminal rates, are matters that have been considered by this respondent for many years, as appears from the reports of this respondent as above set out.

After the fourth section of the act to regulate commerce was amended, June 18, 1910, the carriers filed their Fourth Section Applications Nos. 205, etc., for relief from the provisions of section
138 4, as amended, and after hearing and consideration the respondent filed its reports, 21 I. C. C., 329, and 21 I. C. C., 400, to which reference is made for information. The orders made in accordance with said reports were attacked by the carriers and sustained by the Supreme Court of the United States in Intermountain Rate Cases, 234 U. S., 476. Thereupon the carriers complied in part with the provisions of said order and filed further application for relief from the provisions of section 4, resulting in the order of January 29, 1915. Acting upon the suggestion contained in the report of January 29, 1915, the carriers on April 12 and 13 presented a proposed plan for the adjustment of rates. After fully considering the same the order of April 30, 1915, was entered. All of the above-mentioned orders are made parts of this answer, as above set out. This respondent further states that the carriers have filed tariffs under the orders of the commission, and the rates so made have been accepted by the carriers and by the public except the four cities named as petitioners herein. Respondent states that an annulment of the order would upset entirely the transcontinental westbound rate structure. Respondent states that in dealing with the problem it came to the conclusions announced in its orders after many years of consideration and study of conditions, and that any change of the order by inserting the four cities petitioners herein would make it necessary to readjust the rates to innumerable other cities

139 which have just as much right to ask the court to require that they be included as terminal points as the petitioners have.

Further answering, respondent states that by their petition, as appears by the allegation thereof and the prayer thereof, the petitioners are endeavoring to have this court make orders that this respondent did not make and to declare void the orders that were made because this respondent did not make different orders; and the petitioners are endeavoring to have this court in advance of any action by this respondent, Interstate Commerce Commission, determine the question of discrimination in rates to San Francisco, Stockton, Santa Clara, San Jose, and Sacramento; and petitioners are endeavoring to have this court decide what orders should be made by this respondent, Interstate Commerce Commission. The petitioners thereby are attempting to have the court usurp the functions delegated to this respondent, Interstate Commerce Commission, by the act to regulate commerce. This respondent alleges that the only matter before this court is the validity of the orders that were made, and not the validity or invalidity of orders that were not made and that this respondent refused to make.

Further answering, this respondent denies each and every allegation in said petition in so far as it has not been admitted, denied, or otherwise traversed.

This respondent denies:

1. Any fact or facts alleged in said petition or any part of the same which contradict or seek to contradict any fact or facts found by this respondent in its said reports and orders.

140 2. Any fact or facts alleged in said petition or any part of the same which are inconsistent with any fact or facts found by this respondent in said reports and orders.

3. Any fact or facts alleged in said petition or any part of the same which set up or which seek to set up matters and things which were not before this respondent.

4. Any conclusions of law alleged in said petition or any part of the same which are inconsistent with any conclusions of law held by this respondent in the said reports and orders, or any facts or inferences alleged in said petition, or any part of the same, which are inconsistent with the findings of this respondent in its said reports and orders, all of which matters and things this respondent is ready to aver, maintain, and prove as this honorable court shall direct, and prays the same advantage as to each and all of the matters and things aforesaid as this respondent would be entitled to if the same were specifically pleaded or set forth by way of demurrer or motion to dismiss the complaint.

Wherefore, having fully answered, this respondent prays that the petition be dismissed at the costs of the petitioner, and for such other and further relief as may be appropriate in the premises.

INTERSTATE COMMERCE COMMISSION,
By JOSEPH W. FOLK,
Chief Counsel.

141 CITY OF WASHINGTON,

District of Columbia, ss:

I, Edgar E. Clark, on oath, depose and say that I am a member of the Interstate Commerce Commission and make this affidavit on behalf of said commission; that I have read the foregoing answer and know the contents thereof, and that the same is true.

EDGAR E. CLARK.

Subscribed and sworn to before me, a notary public within and for the District of Columbia, this 9th day of August, A. D. 1915.

ALFRED HOLMEAD,

Notary Public.

Endorsed: Filed August 13, 1915. Walter B. Maling, clerk.

142 In the District Court of the United States, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION, plaintiff,

vs.

No. 191, in Equity.

UNITED STATES ET AL., DEFENDANTS.

Stipulation extending time to answer.

It is hereby stipulated that the defendants, the Atchison, Topeka and Santa Fe Railway Company and the Chicago, Rock Island and Pacific Railway Company, may have ten days additional time from the 12th day of August, 1915, within which to answer the bill of complaint in the above-entitled action.

Dated San Francisco, August 11, 1915.

JNO. E. ALEXANDER,

Attorney for Plaintiff.

Endorsed: Filed Aug. 12, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

143 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and city of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railway Company, respondents.

No. 191,
in Equity.

Motion to dismiss bill of complaint or petition.

Come now the respondents, the Atchison, Topeka & Santa Fe Railway Company, the Denver & Rio Grande Railroad Company, South-

ern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railway Company, by their solicitors, and move the court for an order dismissing the bill of complaint or petition herein upon the following grounds, viz:

First. That the facts therein stated are insufficient to constitute a valid cause of action in equity against the said respondents, or any of them.

Second. That the said petitioners have not in and by the said bill of complaint or petition made or stated such a cause as doth, or ought to, entitle them, or any of them, to such relief as is thereby
144 sought and prayed for from or against these respondents, or any of them.

ALLAN P. MATTHEW,
E. W. CAMP,
C. W. DURBROW,

*Solicitors for Above-Named Respondents,
Flood Building, San Francisco, California.*

Dated at San Francisco, California, August 12th, 1915.

Service of the within motion, by receipt of a copy thereof, is hereby admitted this 12th day of August, 1915.

JNO. E. ALEXANDER,
Solicitor for Petitioners.

Endorsed: Filed Aug. 12, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

145 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railway Company, respondents.

No. 191,
in Equity.

Motion to dismiss bill of complaint on petition.

Comes now the respondent, Chicago, Rock Island & Pacific Railway Company, by its solicitor, and moves the court for an order dismissing the bill of complaint or petition herein upon the following grounds, viz:

First. That the facts therein stated are insufficient to constitute a valid cause of action in equity against the said respondent.

Second. That the said petitioners have not in and by the said bill of complaint or petition made or stated such a cause as doth, or ought to, entitle them, or any of them, to such relief as is thereby sought and prayed for from or against this respondent.

Dated at San Francisco, California, August 12, 1915.

E. W. CAMP,

Solicitor for above-named respondent.

Endorsed: Filed Aug. 17, 1915. Walter B. Maling, clerk.

146 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railway Company, respondents.

No. 191,
in Equity.

Order to show cause.

Upon the application of petitioners, and upon reading the petition filed in the above cause on July 10, 1915, and the amendment to said petition and the affidavits of G. J. Bradley, S. E. Semple, W. D. Wall, and the joint affidavit of said Bradley, Semple, and Wall, filed herewith, and good cause appearing therefor;

It is hereby ordered, adjudged, and decreed that the respondents above named be and appear before the above court, in the court room thereof, in the U. S. Post Office Building, in San Francisco, California, at the hour of 10.00 a. m. on the 13th day of August, 1915, then and there to show cause why the orders of the Interstate

Commerce Commission of January 29, 1915, and April 30, 147 1915, in fourth section applications Nos. 205, 342, 343, 344, 350, and 352, and the tariff filed by the rail carriers, respondents herein, pursuant to said orders, said tariff being designated as Supplement 16 to Trans-Continental Freight Bureau West-Bound Tariff No. 1-N, I. C. C., No. 996 of R. H. Countiss, should not be suspended and set aside and the enforcement, operation, and execution thereof be restrained and enjoined in so far as said orders

and said tariff allow or charge for the transportation of transcontinental westbound freight destined to Sacramento, Stockton, San Jose, and Santa Clara any greater amount than is charged for the carriage of like freight to San Francisco and Oakland, and why an interlocutory injunction to such effect should not issue in the manner provided by law.

The application of petitioners will be based upon the petition filed in the above cause on the 10th day of July, 1915, the amendment thereto, and the above-mentioned affidavits filed herewith, and upon the applications, findings, and orders in said fourth section matters.

It is further ordered that said application for an interlocutory injunction shall be heard and determined by three judges, of whom one shall be a circuit judge; and such judges are hereby called to the assistance of the judge issuing this order to hear and determine said application at the time and place hereinbefore set forth.

It is further ordered that notice of said hearing be given to the respondents above named at least five (5) days prior to the date of said hearing.

Done in open court this 28th day of July, 1915.

(Sgd.)

WM. H. SAWTELLE,

Judge.

Endorsed: Filed July 28, 1915. Walter B. Maling, Clerk.

148 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company, respondents.

No. 191, in Equity.

Notice of motion to dismiss bill of complaint or petition.

To the petitioners above named and to John E. Alexander, their solicitor:

You and each of you will hereby please take notice that on Tuesday, the 17th day of August, 1915, in the court room of the above-entitled court, second division, in the United States Post Office Building in San Francisco, California, at the hour of ten o'clock a. m., or as soon thereafter as counsel can be heard, the respondents

below named will move the court for an order dismissing the bill of complaint or petition herein upon the following grounds, viz:

First. That the facts therein stated are insufficient to constitute a valid cause of action in equity against the said respondents, or any of them; and,

149 Second. That the said petitioners have not in and by the said bill of complaint or petition made or stated such a cause as doth, or ought to, entitle them, or any of them, to such relief as is thereby sought and prayed for from or against the said respondents, or any of them.

Said motion will be based upon the papers, pleadings, record, and file herein and upon this notice of motion.

ALLAN P. MATTHEW,
E. W. CAMP,
C. W. DUBROW,

Solicitors for the Atchison, Topeka & Santa Fe Railway Company, the Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railway Company.

Dated at San Francisco, California, August 12th, 1915.

Service of the within notice, by receipt of a copy thereof, is hereby admitted this 12th day of August, 1915.

JNO. E. ALEXANDER,
Solicitor for Petitioners.

Endorsed: Filed Aug. 12, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

150 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

No. 191, in Equity.

Order setting place and date of hearing of motion to dismiss.

It appearing to this court that the respondents, The Atchison, Topeka & Santa Fe Railway Company; The Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Rail-

road Company; and Western Pacific Railway Company, have filed herein a motion to dismiss the bill of complaint or petition in the above-entitled cause, which said motion to dismiss is based on the following grounds, viz:

First, that the facts therein stated are insufficient to constitute a valid cause of action in equity against the said respondents, or any of them; and,

Second, that the said petitioners have not in and by the said bill of complaint or petition made or stated such a cause as doth, or ought to, entitle them, or any of them, to such relief as is
151 thereby sought and prayed for from or against the said respondents, or any of them;

Now, therefore, upon the application of said respondents and for good cause shown, it is hereby ordered, adjudged, and decreed that the motion of the said respondents for an order dismissing the bill of complaint or petition herein upon said grounds shall be heard and determined by the above-named court in the court room thereof, second division, in the United States Post Office Building in San Francisco, California, at the hour of 10 o'clock a. m., on the 17th day of August, 1915.

It is further ordered, that notice of said hearing be given to the petitioners herein at least five days prior to the date of said hearing.

Done in open court this 12th day of August, 1915.

M. T. DOOLING, *Judge.*

Endorsed: Filed Aug. 12, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

152 In the United States District Court, Northern District of California, Second Division.

MERCHANTS AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

No. 191,
in Equity.

Notice of motion.

To the respondents above named:

You and each of you will please take notice that petitioners above named will move the judges of the above court, in the court room

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thereof, in the U. S. post-office building, in San Francisco, California, at the hour of 10.00 a. m., or as soon as counsel can be heard thereafter, on the 13th day of August, 1915, for an order suspending and setting aside the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, in fourth section applications Nos. 205, 342, 343, 344, 349, 350, and 352, and the tariff filed thereunder by the rail carriers, respondents herein, pursuant to said orders, said tariff being designated as Supplement 16 to Trans-Continental Freight

Bureau West-Bound Tariff No. 1-N, I. C. C. No. 996, of R. H. 153 Countiss, and restraining and enjoining the enforcement, operation, and execution thereof in so far as said orders and said tariff allow or charge for the transportation of transcontinental west-bound freight destined to Sacramento, Stockton, San Jose, and Santa Clara any greater amount than is charged for the transportation of like freight to San Francisco and Oakland, and for an interlocutory injunction to such effect.

Said motion will be made upon the following grounds, to wit: That Sacramento, Stockton, San Jose, and Santa Clara are entitled to terminal rates because of the fact that the rail carriers, in competition with the water carriers, have reduced the rates on the carriage to said points of westbound transcontinental commodities from competitive points in eastern defined territory, and that there was no hearing and no changed conditions to justify an increase of rates; that the charging of higher rates to the four cities mentioned than are charged for the transportation of like commodities to San Francisco and Oakland is violative of the fourth section of the act to regulate commerce; that the increase of rates to the four cities mentioned is unjust and discriminatory as to them and gives an undue and an unlawful preference and advantage to San Francisco and Oakland; that the circumstances and conditions surrounding the four named cities are similar to those surrounding San Francisco and Oakland and the transportation of freight to them is under similar circumstances and conditions as the transportation of like freight to San Francisco and Oakland; that no evidence was introduced before the Interstate Commerce Commission showing that the rates which the four cities mentioned had heretofore enjoyed were not reasonable or showing changed conditions or justifying an increase of said rates; that neither the four cities, nor any of the commercial

bodies or organizations thereof, nor the petitioners herein, were 154 parties to any of the proceedings before the Interstate Commerce Commission wherein the aforesaid orders were made; that petitioners herein were denied the right by the Interstate Commerce Commission of appearing and showing their rights in the matter; that property was taken from petitioners without due process of law; that petitioners were denied the equal protection of the law; that the aforesaid orders and the tariff filed thereunder will cause petitioners irreparable damage and injury; and that said orders and the tariff filed thereunder are contrary to law.

Said motion will be made and based upon the petition of petitioners heretofore filed herein on July 10, 1915, and upon the amendment to said petition; the joint affidavit of G. J. Bradley, S. E. Sample, and W. D. Wall; the affidavits of G. J. Bradley, of S. E. Semple, and of W. D. Wall; and the order of the judge of the above court to show cause, together with this notice, copies of which are herewith served upon you, and upon the applications, findings, and orders in said fourth section matters.

Dated July 28th, 1915.

JOHN E. ALEXANDER,
Solicitor for petitioners.

Endorsed: Filed Sep. 17, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

155 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; United States of America; Interstate Commerce Commissioner; Atchison, Topoka & Santa Fe Railway Company; Denver and Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

No. 191,
in Equity.

United States marshal's return of service on order to show cause.

I, J. B. Holohan, United States marshal in and for the Northern District of California, hereby certify, that at San Francisco, California, on July 28th, 1915, I received from John E. Alexander, plaintiff's attorney, two copies of order to show cause, signed by Wm. H. Sawtelle, U. S. district judge, and notice of motion, signed by said Alexander as solicitor for petitioners, both of them being dated San Francisco, California, July 28th, 1915; and thereafter—to wit, at San Francisco, California, on July 31, 1915—I handed to and left one of said copies of order to show cause and notice of motion, together with copy of amendment to petition, copy of points and authorities for interlocutory injunction, copy of affidavit of G. J. Bradley, copy of affidavit of S. E. Semple, copy of affidavit of
156 W. D. Wall, and copy of affidavit of Bradley, Semple & Wall, jointly, with Warren Olney, one of the receivers appointed by the United States District Court in and for the Northern Dis-

trict of California, for the Western Pacific Railroad Company; and the other copy of order to show cause and notice of motion, together with copy of amendment to petition, copy of points and authorities for interlocutory decree, copy of affidavit of G. J. Bradley, copy of affidavit of S. E. Semple, copy of affidavit of W. D. Wall, and copy of affidavit of Bradley, Semple & Wall, jointly, with C. W. Durbrow, who is the attorney for the Southern Pacific Company at San Francisco, California, on August 2, 1915.

J. B. HOLOHAN,
United States Marshal.
By I. W. GROVER,
Office Deputy.

Dated San Francisco, Cal., August 2nd, 1915.

157 This is to certify that I executed service upon the Chicago, Rock Island, and Pacific Railway Company, by delivering to Jacob M. Dickenson, receiver, one copy of each of the following papers: An order to show cause and notice of motion; amendments to petition; points and authorities for interlocutory injunction; affidavit of G. J. Bradley, affidavit of S. E. Semple; affidavit of W. D. Wall; and affidavit of Bradley, Semple, and Wall, jointly. Done at Chicago, Illinois, this 5th day of August, A. D. 1915. Above papers being served in re Merchants' and Manufacturers' Traffic Association of Sacramento et al. vs. United States of America et al.

Marshal's fees: 1 service, 2.00; 1 mile, .06—2.06.

JOHN J. BRADLEY,
U. S. Marshal.
By JOHN S. ROBERTS,
Deputy.

Subscribed and sworn to before me at Chicago, Illinois, this 5th day of August, A. D. 1915.

[SEAL.]

LEWIS F. MASON,
U. S. Commissioner.

158 United States of America, in the District Court of the United States for the Southern District of California, Southern Division.

MERCHANTS' & MANUFACTURERS' TRAFFIC ASSO-
ciation of Sacramento et al., plaintiff,

vs.

THE UNITED STATES OF AMERICA ET AL., DE-
fendant.

} Affidavit of service.

STATE OF CALIFORNIA,
County of Los Angeles, ss.

Fenton G. Thompson, being duly sworn, on oath deposes and says:
I am a citizen of the United States over the age of twenty-one

years and a resident of the city of Los Angeles, county of Los Angeles, State of California.

That at the request of the attorney for the petitioner I served on the 2d day of August, 1915, an order to show cause and notice of motion, together with amendments to petition, points and authorities for interlocutory injunction, affidavit of G. J. Bradley, affidavit of S. E. Semple, affidavit of W. D. Wall, and affidavit of Bradley, Semple, and Wall, jointly, upon the Atchison, Topeka, and Santa Fe Railway, by leaving with E. N. Camp, agent of said company.

FENTON G. THOMPSON,

Subscribed and sworn to before me this 4th day of August, 1915.

WM. M. VAN DYKE,
Clerk, U. S. District Court,
Southern District of California.
By CHAS. N. WILLIAMS,
Deputy.

[SEAL.]

159 UNITED STATES OF AMERICA,
District of Colorado, ss:

I hereby certify and return that I did, on the 3rd day of August, A. D. 1915, at Denver, in the district of Colorado, duly serve an order to show cause, issued out of the United States District Court for the Northern District of California on the 28th day of July, A. D. 1915, wherein the Merchants and Manufacturers Traffic Association of Sacramento et al. are plaintiffs and the United States of America et al. are defendants, upon the Denver and Rio Grande Railroad Company, by delivering a copy of said order, together with a copy of the notice of motion, amendments to petition, points and authorities for interlocutory injunctions, affidavits of G. J. Bradley, S. E. Semple, and W. D. Wall, and joint affidavit of G. J. Bradley, S. E. Semple, and W. D. Wall attached to said order, to J. B. Andrews, assistant secretary of said company.

S. J. BURRIS,
United States Marshal,
By T. J. McCLUER,
Deputy.

Fees & costs, \$2.00.

Subscribed and sworn to before me this 3rd day of August, A. D. 1915.

[SEAL.]

CHARLES W. BISHOP, Clerk,
By ALBERT TREGO,
Deputy Clerk.

160 Department of Justice. Marshal of the United States, District of Columbia.

WASHINGTON, D. C., August 4, 1915.

MERCHANTS & MANUFACTURERS TRAFFIC ASSOCIATION OF
Sacramento et al.

vs.

UNITED STATES OF AMERICA ET AL.

This is to certify that in the above-entitled case personal service of the following papers, viz—

1. Order to show cause and notice of motion,
2. Amendments to petition,
3. Points and authorities for interlocutory injunction,
4. Affidavit of G. J. Bradley,
5. Affidavit of S. E. Sample,
6. Affidavit of W. D. Wall,
7. Affidavit of Bradley, Sample, and Wall jointly—

was made this 4th day of August, 1915, upon the United States by personal service on Thomas W. Gregory, Attorney General of the United States, and upon the Interstate Commerce Commission by personal service on George B. McGinty, secretary to said commission.

MAURICE SPLAIN,
United States Marshal, District of Columbia.

161 MERCHANTS AND MANUFACTURERS TRAFFIC
Association of Sacramento et al.

vs.

UNITED STATES OF AMERICA ET AL.

No. 191, Equity.

I certify that I received on the 2nd day of August, 1915, in the case Merchants and Manufacturers Traffic Association of Sacramento et al. vs. United States of America et al., certified copies of certain papers, as follows, to wit: An order to show cause and notice of motion; amendment to petition; points and authorities for interlocutory injunction; affidavit of G. J. Bradley; affidavit of S. E. Sample; affidavit of W. D. Wall; joint affidavit of G. J. Bradley, S. E. Sample, and W. D. Wall; each and all of which I served at Salt Lake City, in the district of Utah, on the 3rd day of August, 1915, upon the Union Pacific Railroad Company, by delivering the said copies to Joseph F. Smith, a director for the said Union Pacific Railroad Company, it having no officer of higher rank within the district of Utah.

AQUILA NEBEKER,
United States Marshal,
By L. H. SMYTH,
Chief Deputy.

OPINION No. 1365.

BEFORE THE
Interstate Commerce Commission.

No. 1665.

RAILROAD COMMISSION OF NEVADA

v.

SOUTHERN PACIFIC COMPANY ET AL.

Decided June 6, 1910.

REPORT OF THE COMMISSION.

No. 1665.
RAILROAD COMMISSION OF NEVADA
v.
SOUTHERN PACIFIC COMPANY ET AL.

Submitted February 7, 1909. Decided June 6, 1910.

Class rates from points in eastern defined territory to points in Nevada found unreasonable; reasonable rates prescribed for the future.

H. F. Bartine and R. C. Stoddard for complainant.

F. O. Dillard, P. F. Dunne, and C. W. Durbrow for Southern Pacific Company and Nevada & California Railroad Company.

Seth Mann for Traffic Bureau of the Merchants' Exchange of San Francisco, intervener.

Edward G. Kuster and Joseph P. Loeb for Associated Jobbers of Los Angeles, intervener.

REPORT OF THE COMMISSION.

LANE, Commissioner:

The highest main-line rates to be found in the United States are those from eastern points to stations in Nevada. For carrying a carload of first class traffic containing 20,000 pounds from Omaha to Reno the Union Pacific-Southern Pacific line charges \$858. If a like carload is carried 154 miles further, to Sacramento, the charge is but \$600. The first class rate to the more distant point, Sacramento, is \$3 per 100 pounds, and to the nearer point, Reno, \$4.29 per 100 pounds. If a like carload of freight originates at Denver, 500 miles west of Omaha, the same rates to Reno and Sacramento apply; and if the freight originates at Boston, 1,700 miles east of Omaha, the rates are the same. This interesting rate condition arises out of two simple facts: (1) The whole of the United States from Colorado common points to the Atlantic seaboard, barring a few of the southeastern states, is one wide group or zone from which practically uniform rates to Pacific coast water points are made, and (2) the rates to Reno are based upon these blanket rates to coast cities, and amount

to the sum of the rates to the coast plus the local rates back to point of destination.

This great zone, extending from the Rocky Mountains to the Atlantic, a distance of over 2,000 miles, from which practically uniform rates are made to Pacific coast terminal cities, is probably without parallel in the railroad world, excepting for a similar eastward blanket extended to Pacific coast producing points. The zone in which the same rates apply on California citrus fruits, for instance, extends from Salt Lake City on the west to Portland, Me. It is manifest that the transcontinental railroads have made a near approximation to the postage-stamp system of rate making. Their policy has been to give to all eastern producing markets an opportunity to sell to the terminal cities upon a parity as to transportation charges and to give to Pacific coast producing points access to all eastern markets upon a like basis. To the great basin lying between the Rocky Mountains and the Sierra Nevadas the carriers have in a limited degree extended this same policy by making rates into Nevada based on the coast cities, and thus, the carriers say, they give to this territory the advantage of its proximity to the Pacific seaboard; that the rates to the latter are made low because of water competition between the Atlantic and Pacific ports—lower than would be justified were Sacramento and San Francisco not upon the water—and that Nevada rates would be still higher but for its nearness to the Pacific coast.

The state of Nevada, through its railroad commission, now comes asking that Nevada points be given the same rates as are now given to Pacific coast terminals, urging that these coast rates are not unreasonably low in themselves, and are not the product of any real water competition.

The complaint originally filed in this case made the Southern Pacific the sole defendant; the reasonableness of the rates from the east to Nevada were not attacked, excepting in so far as they are based on the rates to further western points, and include a back-haul charge. As the complaint then stood the petition was that this Commission should hold it to be unreasonable for the Southern Pacific, delivering freight at Reno and other points in Nevada, to charge for a back haul which is not in fact given, and that we should adjudge the rates to Sacramento to be reasonable as applied to the intermediate points. Later the complaint was amended by adding carriers east of Ogden forming a single through route from the Atlantic coast. So that the petition of Nevada now is that from all points upon this through route reasonable rates shall be fixed which shall not exceed those now applicable on shipments from such points to the more distant coast terminals. It is suggested by the complainant that we bring in other carriers as defendants, so that the entire

eastern territory may be covered by our order. This we think unnecessary, assuming, as we do, that the conclusions here reached as to a through route from the east to the west will be adopted and established by other lines similarly situated.

CONSTRUCTION OF NEVADA RATES.

To reach a clear understanding of the basis upon which Nevada rates in general are now fixed, it is necessary to bear primarily in mind the fact before referred to, that the carriers of the country have united in establishing a zone 2,000 miles in width from which rates are practically uniform to what are known as "coast terminals." There are 152 of these coast terminals, 97 of which are in California. They are points more or less arbitrarily established by the carriers, but which are either upon inlets from the ocean or rivers running to such inlets, or are but slightly removed from such water points. The most prominent coast terminals are Seattle, Tacoma, Portland, Sacramento, San Jose, Stockton, Oakland, San Francisco, Los Angeles, and San Diego. To these coast terminals are extended what are known as "terminal rates" on westbound transcontinental traffic. These rates apply either from all of eastern defined territory or from separate groups therein. The shaded portion of the accompanying map indicates eastern defined territory and the groups into which it is divided. These groups are lettered from A to J. A is limited to New York City piers, and has to do only with shipments by steamship via Gulf ports; B covers New England territory; C, New York territory and the middle states, with New York City as the principal point; D, Chicago and adjacent territory; E, the Mississippi River, with St. Louis as the principal city; F, the Missouri River; G, Kansas; H, Oklahoma; I, Texas; and J, Colorado, with Denver as its central point.

Class rates.—Coming, then, to the construction of the Nevada class rates, we find that the carriers have employed three methods of construction during the past two years. Prior to January 1, 1909, there existed a body of what were known as intermediate class rates to Reno from certain designated eastern points. These rates were, on first class—

From Chicago-Milwaukee common points.....	\$3.90
From Mississippi River common points.....	3.70
From Missouri River common points.....	3.50
From Colorado common points.....	3.00

An alternative clause gave Reno the right to the combination rate based on Sacramento whenever that should be lower. This indefinite method of stating rates the Commission condemned in a general ruling. The tariffs were then changed so as to cancel the alternative

the history and the effect of these various changes in the method of rate basing. We shall deal with the rates to all Nevada points as joint rates. And inasmuch as rates on all ten classes were quoted by the carriers' tariffs from all eastern defined territory to coast terminals and therefore by combination to interior points, at the time when this proceeding was brought, we shall consider that our jurisdiction extends to the installation of such rates to all of such territory.

To ascertain the rate upon a shipment from New York to Reno one looks in vain for any one tariff in which such rate is to be found. By examination of the tariff of the Transcontinental Freight Bureau, to which the Southern Pacific Company is a party, this note is discovered:

Rates to intermediate points.

When no specific rate is named to an intermediate point shown in Transcontinental Freight Bureau Circular No. 16-C (I. C. C. No. 884), supplements thereto, or reissues thereof, rate to such an intermediate point will be made by adding to the rate shown to the point designated herein as "Terminal," which is nearest destination of shipment, the local rate from nearest terminal point to destination.

Turning to Transcontinental Freight Bureau Circular No. 16-C (the issue at the date at which this complaint was brought), we find Reno named as an intermediate point, and that the nearest terminal to Reno is Sacramento, 154 miles west of Reno. We find, then, by returning to the Transcontinental Freight Bureau west bound tariff, the rate applicable upon the shipment to Sacramento. Then, having ascertained this from a tariff to which all of the carriers from New York to Sacramento are parties, we must next find the local rate from Sacramento to the destination of the freight, which is east of Sacramento. This local rate, Sacramento to Reno, we find in a tariff to which the Southern Pacific Company alone is a party. Thus we have, through a maze of tariffs, at length discovered the rate from New York to Reno, which is made up of a joint through rate to Sacramento and a local rate of the Southern Pacific Company alone from Sacramento back to Reno.

The all-rail class rates, in cents, per 100 pounds from eastern defined territory to coast terminals were, when this case was brought, as follows:

	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Groups B, C, D, E, F, G, H, and I.....	\$3.00	\$2.60	\$2.20	\$1.90	\$1.65	\$1.60	\$1.25	\$1.00	\$1.00	\$0.95
Group J	3.00	2.60	2.00	1.75	1.60	1.40	1.20	.95	.85	.80

An examination of present tariffs will show that from New England and New York territories (Groups B and C) no class rates below fourth class are now extended. Prior to January 1, 1909, however, and at the time this complaint was brought, rates were given for the full 10 classes from these groups, and such rates upon the \$3 scale are now given to coast terminals from Group A, the freight being carried from the New York City piers to New Orleans and Galveston by ocean carriers and thence by rail. It will also be seen that from Group J slightly lower rates are made on all classes below second class than are made from other groups. With these exceptions, however, the rates are uniform throughout the whole eastern defined territory as to classified freight.

The local rates on classes from Sacramento to Reno are as follows:

Class	1	2	3	4	5	A	B	C	D	E
Rate	129	112	102	87	78	78	24	23.5	25.5	25.5

The result of the combination on Sacramento is therefore to produce the following rates to Reno:

From Groups B, C, D, E, F, G, H, and I:

Class	1	2	3	4	5	A	B	C	D	E
Rate	429	373	322	277	243	238	159	133½	125½	120½

From Group J:

Class	1	2	3	4	5	A	B	C	D	E
Rate	429	373	302	262	238	218	154	128½	110½	105½

Rates to points east of Humboldt, such as Winnemucca and Elko, under the present method of making rates on the Ogden combination, vary as the rate from point of origin to Ogden.

The effect of this change in method of making rates may be illustrated briefly by the statement that the first class rate to Reno from Chicago prior to January 1, 1909, was \$3.90, whereas it is now \$4.29; from Missouri River \$3.50, and now \$4.29. To Elko, on the other hand, the first class rate from Chicago is now \$4.27, as against a previous rate of \$4.72½, when the rate based on Sacramento.

For many years the class rates to interior points, such as Reno, were no higher than to the terminals. On April 11, 1893, the practice of maintaining lower terminal rates was instituted. The first line of figures in the table below shows the Reno rates when this case was brought; the second line, the rates in 1892; and the third line, the difference, or the amount by which the rates have been increased.

To Reno from—	Class.										
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.	
Missouri River common points.....	429	373	322	277	243	238	156	133	125	120	
1892 rates.....	850	800	260	200	175	175	155	125	110	100	
Difference	79	73	72	77	68	63	4	8	10	20	
Mississippi River common points.....	429	373	322	277	243	238	156	133	125	120	
1892 rates.....	370	320	260	205	180	182	163	130	115	105	
Difference	59	58	62	72	63	56	-----	3	10	15	
Chicago common points.....	429	373	322	277	243	238	156	133	125	120	
1892 rates.....	380	340	270	235	185	190	170	135	120	110	
Difference	39	33	52	42	58	48	-----	-----	5	10	

Commodity rates.—While there are many hundred commodity rates extended to coast terminals, there are but few given to intermediate points. On the following articles the commodity rates are the same to Utah and Nevada points as to Pacific coast terminals from Groups D, E, F, G, H, I, and J of eastern defined territory, which include all points from Chicago west:

Apples; bananas; beer, in wood; bones; broom corn; butter, but-terine, oleomargarine, eggs, cheese, and dressed poultry; cars, street; barley, corn, rye, oats, and speltz, c. l. and l. c. l.; bran and shorts, c. l. and l. c. l.; brewer's grits, brewer's meal, corn meal, corn chop or chop feed, chopped corn, cracked corn, and hominy; buckwheat, c. l. and l. c. l.; wheat, c. l. and l. c. l.; cooperage, cranberries; fertilizers, n. o. s.; household goods, c. l. and l. c. l.; live stock; machinery, min-ing; mineral-water bottles, returning; oil cake and oil-cake meal; onions; onion sets, l. c. l.; packing-house products; pineapples; plaster, building; poultry, alive; railway equipment; and staves and headings.

As to all but two or three of these commodities, the rates are the same to Reno as to Sacramento from Chicago. That is to say, the blanket rate made from all eastern defined territory to coast terminals on these commodities is applied from Chicago to Reno. There are a few other commodities upon which commodity rates are given to Reno which are somewhat higher than the rates from Chicago to Sacra-mento, viz, automobiles, buggies, carriages, wagons, vehicles, and coal, coke, and guano from certain far western points. From an examina-tion of the tariffs it appears that the transcontinental commodity rates—rates from eastern defined territory to the coast terminals—are at the present time higher than they were ten years ago by a very con-siderable percentage and this regardless of the fact that the base of supplies has been constantly moving westward, thereby narrowing the distance between point of production and consumption.

VOLUME OF NEVADA TRAFFIC.

Nevada is colloquially known as the "Sage Brush State," and from the car window it presents the spectacle of an almost uninterrupted waste. Railroad men speak of it as a "bridge"—unproductive territory across which freight must be carried to reach points of consumption. The figures of the Southern Pacific demonstrate, however, that while Nevada traffic may at one time have been negligible such is no longer the case.

Some time before this proceeding was brought the Southern Pacific Company, which is the lessee of the Central Pacific running from Ogden west into California, brought suit in the United States circuit court for the district of Nevada attacking certain rate schedules upon state traffic established by the state commission. In support of its case the Southern Pacific Company filed an affidavit made by Mr. C. B. Seger, auditor of the Southern Pacific Company, showing the earnings of the Central Pacific on business wholly within the state, on business passing through the state, on business originating in and passing out of the state, and on business originating outside and having its destination in the state, for the fiscal year ending June 30, 1907. Mr. Seger said by way of explaining his figures:

The freight earnings accruing to and made by said Southern Pacific Company in Nevada, being the revenue itself, without reference to its disposition under any lease, agreement, or otherwise, are derived for the said fiscal year 1907 from through and local business, understanding by local business such as is strictly intrastate in character, picked up and laid down within the limits of the state of Nevada, and understanding by through business such as is interstate in character. Further differentiating, said interstate business consists, first, of business originating outside and coming into the state; second, of business originating in and passing out of the state; and, third, of business originating outside the state, having destination beyond the state, and, in relation to the state itself, simply passing through the state. The freight earnings for said fiscal year, and pertaining to the said business as above classified, are set forth under the appropriate heads, and are, in fact, as follows:

	Revenue.	Percentage of total.
Intrastate.....	\$150,791.40	0.02
Originating outside and coming into the state.....	1,083,027.09	.20
Originating in and passing out of the state.....	831,002.96	.10
Passing through the state.....	2,676,282.05	.22
	5,676,282.28	.68
Sum total.....	8,252,564.28	1.00

Surprising as these figures are they apparently do not fully set forth the extent of Nevada business at this time, as is shown by an exhibit filed by the Southern Pacific Company in the present case,

giving the business west of Ogden for the single month of February, 1909, which may be epitomized thus:

	Revenue.	Percent- age of total.	Tonnage.	Percent- age of total.
Intrastate.....	\$29,001.00	0.08	4,715	0.04
Into and out of Nevada and Utah west of Ogden.....	\$14,579.65	.38	64,867	.50
\$43,580.65		.41	69,182	.54
Passing through the state.....	495,128.37	.59	60,271	.46
Total for month of February, 1909.....	\$88,509.02	1.00	130,453	1.00

Another most interesting showing is made by the Seger affidavit as to passenger business on the Southern Pacific in the state of Nevada for the year 1907, the figures given being these:

	Revenue.	Percent- age.
Intrastate.....	\$286,235.65	10
Originating outside and coming into the state.....	357,511.55	9
Originating in and passing out of the state.....	267,582.35	13
—		22
Passing through the state.....	1,963,915.33	— 32
—		68
Sum total.....	2,874,245.38	100

The statement for the month of February, 1909, referred to above, sets forth very clearly not only the volume of business going into and out of Nevada and the earnings of the Southern Pacific thereon; but also gives a specific analysis of the sources of the traffic, showing the volume which comes into Nevada from the east and that which comes from California. Under "Question 2" below will be found a statement of the freight received at Nevada and Utah points from points west of Calvada, which is a station directly on the California-Nevada state line. This table, however, should not mislead; a considerable percentage of the traffic from California is traffic of eastern origin reshipped from California to Nevada. The table also includes coal and other commodities of very large tonnage (approximately one-half of the total in weight) coming from points west of eastern defined territory.

Territorial movement.	Total.	
	Tons.	Southern Pacific earnings.
Gross total tonnage and earnings of the Southern Pacific Co. for the month of February, 1909.....	913, 802	\$3, 432, 529. 00
Question No. 1.		
Freight via Ogden to California.....	37, 386	\$30, 230. 56
Freight via Ogden from California.....	22, 385	174, 907. 92
	60, 271	495, 128. 37
Question No. 2.		
Freight via Ogden to points in Nevada and Utah.....	17, 485	\$6, 394. 88
Freight received at Nevada and Utah points from points west of Calvada....	16, 823	144, 803. 00
Freight via Ogden from points in Nevada and Utah.....	18, 381	\$3, 462. 77
Freight forwarded from points in Nevada and Utah to points west of Calvada....	11, 678	69, 667. 00
	64, 367	\$14, 579. 65
Question No. 3A.		
Freight received in California, San Francisco and north, from all points in California, including interchange with connecting lines in California.....	139, 827	\$65, 168. 00
Question No. 3B.		
Freight picked up and laid down in Nevada and Utah and freight moving between Nevada and Utah—		
Nevada to Nevada.....	4, 046	21, 839. 00
Utah to Utah.....	144	948. 00
Utah to Nevada.....	499	8, 122. 00
Nevada to Utah.....	26	1, 092. 00
	4, 715	\$9, 001. 00

There was a time, doubtless, when Nevada traffic, save to the mines on its westernmost border, was but trifling. At present, however, it has a traffic, both freight and passenger, which is far too considerable to be overlooked under the rule *de minimis*. And it is to be remembered that the figures given apply to but one road, whereas a second is in operation across the state to the south, and a third is beginning operations on the north.

SOURCES OF EASTERN TRAFFIC.

It is interesting in this connection to regard the point of origin of this eastern freight. The railroad commission of Nevada had access to the billing of all shipments reaching Reno, and from these compiled a series of statements which appear to show that the great body of Nevada traffic which comes directly from the east via Ogden originates west of the Indiana-Illinois state line.

From one exhibit it appears that of the 1,063,687 pounds of less-than-carload shipments originating in eastern defined territory and delivered at Reno during the months of January, February, March, and April, 1908, only 10 per cent originated at the Atlantic coast cities of New York, Boston, and Philadelphia, and only 25 per cent in Connecticut, District of Columbia, Maine, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Virginia. This exhibit

further shows that on the traffic moved the charges were \$32,719.30; that if terminal rates had been applied charges would have been \$21,956.24; and that the difference is \$10,748.07. In other words, the charges on these shipments to Reno were 48.3 per cent higher than would have been the charges on the same shipments had they been carried over the mountains to Sacramento.

Another exhibit shows that of 21,000,000 pounds of carload freight, earning \$278,000, moved from eastern defined territory into Reno, 9,500,000 pounds, earning \$120,000, moved in at rates no higher than terminals. It further shows that only 4,500,000 pounds of the 21,000,000 originated east of Chicago. This exhibit shows, aside from the products carried to Reno at terminal rates, that the charges were, for the year 1908, \$157,824.94; that the terminal charge would have been \$99,679.90; and the difference, \$58,524.40. In other words, the charges on carload shipments to Reno were 59 per cent higher than the charges on the same shipments would have been had they been carried to Sacramento.

Commissioner Thurtell estimated from the figures at his hand that the total receipts under present rates upon business brought into Reno via Ogden for the year 1908 amounted to \$454,343.69 and under terminal rates the revenue would have been \$363,865.23, a reduction of \$90,478.46. The statement also shows that the revenue to the Southern Pacific from this business was \$268,516.40 and would have been under terminal rates \$178,037.94, a reduction of \$90,478.46, or about 33 per cent. Expressed in revenue the Southern Pacific on the haul from Ogden to Reno earned \$11.51 per ton, while if terminal rates had been charged its earnings would have been \$7.63 per ton.

On the whole, the figures given in this case, which are the most authoritative thus far presented to the Commission with reference to the sources of westbound transcontinental traffic, indicate that less than 25 per cent of the traffic into Reno from the east originates east of Chicago, while 75 per cent originates between Chicago and Denver. In other words, the needs of the people on the west coast may be and are in great part supplied from sources nearer home than the Atlantic seaboard.

The manufacturing center of the country has moved westward and rates from the Atlantic seaboard that were once necessary are now almost unused. It may be historically the fact, as the carriers assert, that the transcontinental blanket rates given to the Pacific coast cities were put in to meet water competition from the Atlantic coast points, and that these rates were extended westward from the Atlantic as matter of grace to western manufacturers and producers; to-day, however, it might well be said that this blanket is extended not westward, but eastward, so as to give the eastern manufacturer or jobber some opportunity to reach the far western markets.

WATER COMPETITION.

As we have seen, the rates are higher on almost all commodities from eastern producing points to Reno than on these same commodities to Sacramento, the more distant point. Without explanation this constitutes a violation of the long-and-short-haul clause of the act. The carriers justify the lower rates to the more distant point upon the ground of water competition. They say that the rates charged to Reno and other Nevada cities are reasonable in themselves measured by the cost of the service to the carrier or the value of the service to the shipper, and that rates to the coast cities measured by these standards are too low to be considered reasonable and would not be in effect but for the force of water competition. The Nevada commission, on the other hand, contends that while some commerce does move from the Atlantic seaboard by water, the volume is so small that it is not influential in determining the present rate to the coast terminals; that the coast rate itself is reasonable, and therefore that the application of a higher rate to an intermediate point can not be justified. The making of higher intermediate rates, they strongly urge, is a matter of railway policy and not of railway necessity, in that the railways wish to develop the coast cities as jobbing centers to the exclusion of interior points; that the revenues of the carriers would not be seriously impaired were this policy abrogated and as low rates given to the intermountain country as are now extended to the coast cities.

It is no reflection upon the traffic manager of a railroad to say that he bases his rates upon some line of policy. He deals directly, and in most cases exclusively, with the producer or the jobber. His concern is to keep these patrons satisfied and at the same time bring to his railroad the greatest possible revenue. This is what he means by saying that he charges what the traffic will bear. He regards as reasonable whatever rate will make for the best interest of his road, and in determining this he adopts a line of policy which affects either favorably or unfavorably the industrial growth of the communities which the carrier serves. The restrictions of the act to regulate commerce are governmental limitations placed upon the unlimited and arbitrary discretion of traffic officials. While the latter may adopt policies which they regard as most favorable to their roads, such policies must be restricted by the inhibitions of the law which this Commission must enforce. The policy of making Reno rates base upon those extended to the more distant point may not be justified upon the ground that Reno traffic will bear that imposition, but may be justified by conditions obtaining at the more distant point which the carrier may meet without offense to any provision of the act.

And this brings directly to our consideration the question of water competition at Sacramento and other coast terminals. It is, of course, a physical fact that commerce may be carried by water from the eastern seaboard to the Pacific coast. It is admitted by all, and substantiated by the evidence in this case, that some commerce does actually so move. An estimate has been made by complainant that approximately 3,000,000 tons of transcontinental traffic reaches the coast terminals during each year by rail, while the highest figure given as the volume of traffic reaching those points by water from the eastern seaboard is under 10 per cent of the rail movement. The fact, however, that it moves in large or small quantities does not of itself sustain the contention that the present rates from eastern defined territory to coast terminals are so low as not to make a reasonable return to the carrier for the service performed. A movement of traffic may be affected by water competition at a more distant point and yet a rate made up of the combination of the rate by water plus the rate back be unreasonable and unjust. Nevada, Utah, Arizona, and Idaho are nearer to the Pacific coast than to the Atlantic, but this does not of itself justify charging them overland rail rates which will give them none of the advantages arising out of their shorter distance to an eastern base of supplies. Nor does it follow that a rate to a point on the seaboard is lower than would be justified if that point were not so situated. In short, it is not sufficient to state that the terminal points are situated on the water to excuse the imposition of higher rates at intermediate points.

There has been little difficulty experienced from time to time by the rail carriers in raising rates to the Pacific coast; the only live water competitor on the Pacific to-day is a line which bases its rates on the rail tariffs, and the rates of both the rail and the water lines change simultaneously. Ways can be found, and have been found, by which the presence of the ocean as a controlling, or even greatly meddlesome, factor in the fixing of railroad rates can be nullified. There is no doubt but that rail rates have been influenced at times to all the Pacific ports by water carriers, and of course there is the possibility that at any time this water competition may become seriously aggressive and potent. The United States is not a maritime nation at present, and her great coast line on the Pacific side is served in great part by such water carriers as the railroads permit to live.

While, therefore, physical conditions at the coast are dissimilar to those at interior points the rates to the coast are not necessarily less than in fairness the traffic should carry. The water carriers between the Atlantic and the Pacific coasts at present charge rates from 25 to 40 per cent less than their railroad rivals. To get this business the water carrier at the eastern port reaches inland and absorbs a rail

rate of 20 cents upon commodities which carry more than a 50-cent water rate to the Pacific coast. The American-Hawaiian Steamship Company then transports the freight by water to the Tehuantepec road, where it is transshipped across the Isthmus, and being loaded again is carried to a Pacific coast port and there reshipped either by rail or water to certain designated points of destination inland from the port. In such a movement there is involved a rail haul of 400 or 500 miles, at least six, and possibly more, separate handlings of each parcel of freight, and a haul by water of fully 5,000 miles. Freight moving via Panama is subject to even heavier conditions. It is insisted by the Nevada commission that water competition of this character is not sufficiently aggressive or formidable to compel the railroads to make any other rates to the coast terminals than those which from reasons of policy they are at present making. The suggestion is not without pertinence that if four different transportation services, three by rail and two by water, involving at least six handlings of the freight and a total haul of 5,500 miles, can be furnished profitably at from 60 to 75 per cent of the rail rate, the compensation to the rail carrier for an all-rail haul of 2,500 miles, with no handling and but two terminal charges, should produce ample revenue to the rail carrier.

There are many interesting developments in this and other trans-continental cases touching this matter of competition by water. For instance, the lowest rate does not in all cases apply to and from the seacoast points. There are many commodities upon which the rates from Chicago and Kansas City to Sacramento and San Francisco are less than they are from New York. And yet it is said to be the competition from New York that produces the low rate. In no case is the rail rate from New York less than is the rate from other portions of eastern defined territory, while of course in all cases New York is nearer the source of the competing force, the ocean. This is accounted for by the carriers on the ground that by taking the same, or a lower, rate from the interior points to the coast terminals the rail carrier avoids the longer rail haul, the points of origin and destination being nearer together. This is an application of what the carriers term "market competition," but it is not a strong argument to sustain the theory of water competition.

As usually applied by carriers market competition results in the hauling of commodities produced at places distant from the point of consumption to compete with the same commodities from points nearer to the point of consumption. In this case, however, market competition is said to be the controlling factor which justifies a rate from an interior point less distant from destination. Thus we have a \$3 rate from New York to Sacramento to meet water competition, and a \$3 rate from Kansas City to meet market com-

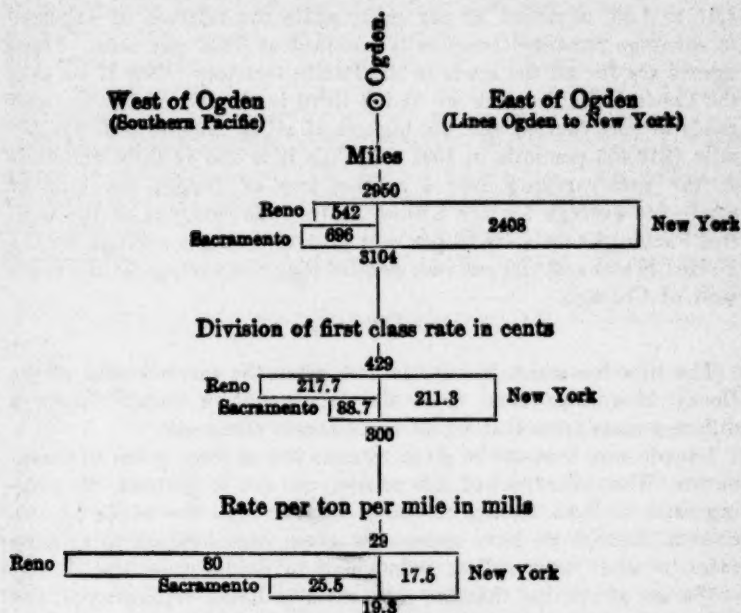
petition. We also have a \$4.29 rate from Kansas City and from New York, to Reno, as a reasonable rate because of water competition from New York to Sacramento.

We do not regard the divisions of rates as in any wise conclusive as to the reasonableness of rates between certain points, but such divisions are sometimes of significance. In the present case we find that if 100 pounds of freight is shipped from Boston, or New York, or Chicago, or St. Louis, or Omaha to Sacramento on the \$3 rate, and another 100 pounds of the same kind of freight is shipped from the same points to Reno on the same day, the carriers east of Ogden receive precisely the same earnings upon both shipments; but the Southern Pacific, west of Ogden, receives far more upon the Reno shipment than on the Sacramento shipment. This is illustrated in the following table:

From—	To—	Rate.	Earnings east of Ogden.	Earnings of Southern Pacific Company (west of Ogden).
		Cents.	Cents.	Cents.
Group B, Boston.....	Sacramento.....	300	211.3	22.7
	Reno.....	429	211.3	217.7
Group C, New York.....	Sacramento.....	300	211.3	22.7
	Reno.....	429	211.3	217.7
Group D, including Chicago, etc.....	Sacramento.....	300	181.9	118.1
	Reno.....	429	181.9	348.0
Group E, including Mississippi River.....	Sacramento.....	300	174.5	125.5
	Reno.....	429	174.5	254.5
Group F, including Missouri River.....	Sacramento.....	300	188.3	140.7
	Reno.....	429	188.3	240.7

Neither at the hearings nor in the argument did the carriers east of Ogden contend that their divisions of these rates were unreasonable. The Southern Pacific, however, the carrier which makes the last 700 miles of a 3,100-mile haul, strenuously insists that its rates to the more distant points are compelled by water competition for the purpose of defending higher rates to intermediate points; while the carriers performing 2,400 miles of that service appear to regard the rate as entirely reasonable. The line from New York to Sacramento and Reno constitutes a through route and in law the carriers engaging therein constitute one line. If the Sacramento rate is less than a reasonable rate and the result of competition then it would seem fair to assume that all of the carriers engaging in the transportation so consider it and would accordingly demand a lesser division than the division they would be justified in requiring out of the higher rate to the intermediate point. The fact remains, however, that for the 2,400-mile haul from New York to Ogden the New York Central, the Lake Shore, the North Western, and the Union Pacific secure the same revenue out of the \$3 rate to Sacramento that they

do out of the \$4.29 rate to Reno. This is graphically illustrated by the following diagram showing the division of the rate:



PRODUCTIVE FREIGHT TERRITORY.

We have gone extensively into an investigation of the conditions surrounding this traffic and in anywise governing the basis upon which the rates to Nevada from the east should be governed. What has been said herein gives little more than a suggestion of the extent of the inquiry which has been made. We have, for instance, had reports made upon the financial condition of the carriers involved, and their ability to meet any reduction which the Commission might direct without serious impairment of their revenues, an interesting fact in this connection being this: During the past two years the operating revenues of the Southern Pacific Company's Pacific system have increased \$8,000,000 while its operating expenses have decreased \$5,000,000, thus producing an increased operating income of over \$12,000,000, or a net increase of about \$2,000 per mile of road.

There appears in the record a compilation from the statistics of this Commission for the years 1898-1907 in which it is shown that in these ten years the carriers in the Pacific coast territory doubled

their freight tonnage, which rose from 18,000,000 to 35,000,000 tons; almost doubled their gross revenue; their receipts per mile increased over 70 per cent; their receipts per ton per mile increased from 1.07 to 1.25, or about 20 per cent; while the relation of expenses to earnings remained practically constant at 62.50 per cent. These figures are for all the roads in the Pacific territory. But if we take the Central Pacific alone we find it third in the list of Pacific coast roads in tons carried and the highest of all in freight earnings per mile (\$13,453 per mile in 1907). While it is one of three railroads in the west carrying over a million tons of freight per mile of road—the average for the United States—the earnings of the Central Pacific per mile are 65 per cent greater than the average for the United States and 100 per cent greater than the average of the roads west of Chicago.

CONCLUSIONS.

The time has come, in our opinion, when the carriers west of the Rocky Mountains must treat the intermountain country upon a different basis from that which has hitherto obtained.

Nevada asks that she be given rates as low as those given to Sacramento. The full extent of this petition can not be granted. In making rates to Reno from a territory broader than the whole of continental Europe we have necessarily given consideration to existing rates to other intermediate points and to points upon the Pacific.

We are of opinion that the class rates to Reno, Winnemucca, and Elko, and other points in Nevada upon the main line of the Southern Pacific Company, from stations on the lines of the defendants between New York and Denver and other Colorado common points are unreasonable and unjust and that for the future no higher rates than those set forth below should be charged to Reno and points east thereof to, but not including, Winnemucca:

From—	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Denver and other points in Group J.....	\$2.10	\$1.82	\$1.64	\$1.33	\$2.12	\$1.12	\$0.87	\$0.70	\$0.66	\$0.60
Grand Island and other points in Group G.....	2.30	2.00	1.68	1.45	1.22	1.22	.96	.78	.73	.65
Omaha and other points in Group F.....	2.50	2.17	1.83	1.58	1.33	1.33	1.04	.83	.79	.71
Clinton and other points in Group E.....	2.50	2.42	2.03	1.71	1.43	1.46	1.14	.91	.86	.78
Chicago and other points in Group D.....	2.90	2.51	2.09	1.75	1.47	1.50	1.18	.94	.89	.80
Toledo and other Cincinnati-Detroit common points.....	3.65	2.63	2.19	1.81	1.52	1.56	1.23	.98	.92	.83
Buffalo and other Pittsburg-Buffalo common points.....	3.20	2.76	2.29	1.87	1.57	1.62	1.28	1.03	.96	.88
New York and common points.....	3.50	3.01	2.49	2.00	1.67	1.75	1.38	1.11	1.03	.93

* As designated in Transcontinental Freight Bureau Westbound Tariff 1-K, I. C. C. No. 920.

† As designated in Nor. Pac. No. 24500, I. C. C. No. 3204.

And that for the future no higher rates than those set forth below should be charged to Winnemucca and points east thereof to the Nevada-Utah state line:

From—	Class.									
	1.	2.	3.	4.	5.	A.	B.	C.	D.	E.
Denver and other points in Group J a.....	\$2.00	\$1.73	\$1.46	\$1.20	\$1.00	\$1.00	\$0.83	\$0.67	\$0.53	\$0.37
Grand Island and other points in Group G a.....	2.19	1.90	1.60	1.35	1.15	1.15	.91	.73	.60	.43
Omaha and other points in Group F a.....	2.35	2.06	1.74	1.50	1.25	1.25	.99	.79	.75	.57
Clinton and other points in Group E a.....	2.55	2.30	1.93	1.62	1.35	1.30	1.06	.85	.83	.74
Chicago and other points in Group D a.....	2.75	2.38	1.90	1.65	1.40	1.43	1.07	.80	.85	.78
Teledo and other Cincinnati-Detroit common points b.....	2.90	2.50	2.05	1.73	1.44	1.48	1.17	.93	.87	.79
Buffalo and other Pittsburg-Buffalo common points b.....	3.04	2.62	2.15	1.78	1.49	1.44	1.23	.98	.91	.83
New York and common points b.....	3.33	2.96	2.37	1.90	1.59	1.66	1.31	1.05	.98	.89

a As designated in Transcontinental Freight Bureau Warbound Tariff 1-K, I. C. C. No. 520.
b As designated in Nor. Pac. No. 22509, I. C. C. No. 3294.

In directing the carriers to establish these class rates we have taken into consideration the fact that the general policy of the carriers is to make commodity rates somewhat lower than class rates on commodities, the movement of which is regarded as necessary to the development of mercantile interests and industries. There are at present, as we have seen, a considerable number of such commodity rates into Reno, but these are entirely insufficient to meet the needs of Nevada if she is to become in any way an independent business community. There is no foundation in the record in this case for the establishment of such commodity rates. The theory upon which the case was presented eliminated all other considerations excepting the claim that all rates extended to Sacramento were reasonable as to Reno and other Nevada points. The Nevada petition was tantamount to a request that under our legal authority to establish reasonable rates we should fix the same rate from Denver as from Boston. We do not so construe our authority as to permit this Commission to make rates upon such a basis. Without doubt the commodity rates made to the coast terminals are reasonable from a great portion of eastern defined territory, but a governmental authority may not exercise the latitude in fixing a rate blanket which the carriers themselves have here exercised.

In the *Spokane case*, 19 I. C. C. Rep. 162, some 600 commodity rates had been established voluntarily by the carriers, and the petition in that case was for the reduction of those rates to a reasonable figure. The carriers had made a special series of zones across the continent to meet the exigencies of the Spokane situation. In the case before us, however, no such favorable condition is presented. We have neither a schedule of commodity rates with which to deal as to which specific complaint is made, nor have the carriers so divided the continent into

groups of originating territory, save in the sense that the transcontinental groups to the coast terminals, which are entirely different from those found in the *Spokane case, supra*, furnish a foundation for present combination rates to western Nevada.

In view of this situation we shall make no order as to commodity rates in this case at the present time, but shall direct the carriers to make a record of all shipments into Nevada from eastern defined territory during the months of July, August, and September, 1910, or during such other representative months as may be determined upon by the Commission after conference with the carriers, and furnish the Commission with a statement showing as to each shipment the following facts:

(1) The commodity; (2) the weight, carload or less than carload; (3) point of origin and the transcontinental territorial group in which the same is situated; (4) rate that would be applied under the tariffs in effect July 1, 1910; (5) the gross charges thereunder; (6) the rate applicable under the order made in this case; (7) the gross charges thereunder; (8) the rate that would be applied were the movement to Sacramento; (9) the gross charges thereunder.

The complainant will be ordered in this case, on or before October 1, 1910, to furnish to the Commission and to the defendant Southern Pacific Company a list of commodities upon which commodity rates are desired, together with an outline of the various territories or groups from which commodity rates should apply.

We are of the opinion that justice can not be done to Nevada unless Nevada points are put on a practical parity with points in eastern Washington and eastern Oregon, and a further hearing will, in due course, be held after the data here requested have been furnished by carriers and complainant.

BEFORE THE

Interstate Commerce Commission.

FOURTH SECTION ORDER NO. 124.

IN THE MATTER OF THE APPLICATIONS, NOS 205, 342, 343, 344, 349, 350, AND 352, ON BEHALF OF THE TRANS-CONTINENTAL FREIGHT BUREAU, BY R. H. COUNTISS, AGENT, FOR RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE AS AMENDED JUNE 18, 1910, WITH RESPECT TO RATES MADE FROM EASTERN POINTS OF SHIPMENT WHICH ARE HIGHER TO INTERMEDIATE POINTS THAN TO PACIFIC COAST TERMINALS.

July 31, 1911.

ORDER OF THE COMMISSION.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 31st day of July, A. D. 1911.

Present:

JUDSON C. CLEMENTS,	} Commissioners.
CHARLES A. PROUTY,	
FRANKLIN K. LANE,	
EDGAR E. CLARK,	
JAMES S. HARLAN,	
CHARLES C. McCHORD,	
BALTHASAR H. MEYER,	

FOURTH SECTION ORDER NO. 124.

IN THE MATTER OF THE APPLICATIONS, NOS. 203, 342, 343, 344, 349, 350, AND 352, ON BEHALF OF THE TRANSCONTINENTAL FREIGHT BUREAU, BY R. H. COUNTISS, AGENT, FOR RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE AS AMENDED JUNE 18, 1910, WITH RESPECT TO RATES MADE FROM EASTERN POINTS OF SHIPMENT WHICH ARE HIGHER TO INTERMEDIATE POINTS THAN TO PACIFIC COAST TERMINALS.

COMMODITY RATES.

These applications, as above numbered, on behalf of the Transcontinental Freight Bureau, ask for authority to continue rates from eastern points of shipment which are higher to intermediate points in Canada and in the States of Arizona, New Mexico, Idaho, California, Montana, Nevada, Oregon, Utah, and Washington, and other States east thereof, than to Pacific coast terminals.

Full investigation of the matters and things involved in these petitions, in so far as they concern westbound commodity rates, having been had,

It is ordered, That for the purposes of the disposition of these applications, the United States shall be divided into five zones, as described in the following manner:

(The transcontinental groups hereinafter described are as specified in R. H. Countiss, Agent's, Transcontinental Tariff I. C. C. No. 929.)

Zone No. 1 comprises all that portion of the United States lying west of a line called Line No. 1, which extends in a general southerly direction from a point immediately east of Grand Portage, Minn.; thence southwesterly, along the northwestern shore of Lake Superior, to a point immediately east of Superior, Wis.; thence southerly, along the eastern boundary of Transcontinental Group F, to the intersection of the Arkansas and Oklahoma State line; thence along the west side of the Kansas City Southern Railway to the Gulf of Mexico.

Zone No. 2, embraces all territory in the United States lying east of Line No. 1 and west of a line called Line No. 2, which begins at the international boundary between the United States and Canada, immediately west of Cockburn Island, in Lake Huron; passes westerly through the State of Mackinaw; southerly, through Lake Michigan to its southern boundary; follows the west boundary of Transcontinental Group C to Paducah, Ky.; thence follows the east side of the Illinois Central Railroad to the southern boundary of Transcontinental Group C; thence follows the east boundary of Group C to the Gulf of Mexico.

Zone No. 3 embraces all territory in the United States lying east of Line No. 2 and north of the south boundary of Transcontinental Group C, and on and west of Line No. 3, which is the Buffalo-Pittsburg line from Buffalo, N. Y., to Wheeling, W. Va., marking the western boundary of Trunk Line Freight Association territory; thence follows the Ohio River to Huntington, W. Va.

Zone No. 4 embraces all territory in the United States east of Line No. 3 and north of the south boundary of Transcontinental Group C.

Zone No. 5 embraces all territory south and east of Transcontinental Group C.

It is further ordered, (1) That those portions of the above-numbered applications that request authority to maintain higher commodity rates from points in Zone No. 1 to intermediate points than to Pacific coast terminals be, and the same are hereby, denied, effective November 15, 1911; (2) that petitioners herein be, and they are hereby, authorized to establish and maintain, effective November 15, 1911, commodity rates from all points in zones numbered 2, 3, and 4, as above defined, to points intermediate to Pacific coast terminals that are higher to intermediate points than to Pacific coast terminals; provided that the rates to intermediate points from points in zones numbered 2, 3, and 4 shall not exceed the rates on the same commodities from the same points of origin to the Pacific coast terminals by more than 7 per cent from points in Zone No. 2, 15 per

cent from points in Zone No. 3, and 25 per cent from points in Zone No. 4.

The Commission does not hereby approve any rates that may be established under this authority, all such rates being subject to complaint, investigation, and correction if they conflict with any other provisions of the act.

By the Commission:

JUDSON C. CLEMENTS, *Chairman.*

INTERSTATE COMMERCE COMMISSION.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 28th day of September, A. D. 1914.

JAMES S. HARLAN,	Commissioners.
JUDSON C. CLEMENTS,	
EDGAR E. CLARK,	
CHARLES C. McCHORD,	
BALTHASAR H. MEYER,	
HENRY C. HALL,	
WINTHROP M. DANIELS,	

SUPPLEMENTAL FOURTH SECTION ORDER No. 124.

IN THE MATTER OF APPLICATION NO. 9574 OF R. H. COUNTISS, AGENT, FOR AND ON BEHALF OF CARRIERS PARTICIPATING IN HIS TARIFF I. C. C. NO. 975, FOR A MODIFICATION OF FOURTH SECTION ORDER NO. 124, AS AMENDED, ENTERED THE 10TH DAY OF JULY, 1914, IN THE MATTER OF APPLICATIONS NOS. 205, 342, 343, 344, 349, 350, AND 352, ON BEHALF OF CARRIERS PARTIES TO TARIFFS THEREIN NAMED, BY R. H. COUNTISS, C. W. BULLEN, AND J. F. TUCKER, THEIR AGENTS, FOR RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE, AS AMENDED JUNE 18, 1910, WITH RESPECT TO COMMODITY RATES FROM EASTERN POINTS OF SHIPMENT WHICH ARE HIGHER TO INTERMEDIATE POINTS THAN TO PACIFIC COAST TERMINALS.

Upon further consideration of the matters and things involved in the above entitled matter,

It is ordered, That that portion of Fourth Section Order No. 124, as amended, which prescribes the territory included in Zone No. II,

be, and the same is hereby, amended, in so far as it relates to traffic destined to California terminals and points intermediate thereto, so that Zone No. II shall include the additional territory described as follows:

NORTHERN BOUNDARY LINE.—Including points located on a line beginning at Linton, N. Dak., thence via an imaginary line to but not including Wishek, N. Dak., thence just south of the line of the Minneapolis, St. Paul & Sault Sainte Marie Railway (but not including points thereon) to C., M. & St. P. Crossing (Monango), N. Dak., thence just west of the line of the Chicago, Milwaukee & St. Paul Railway to and including Edgeley, N. Dak., thence just east of the line of the Chicago, Milwaukee & St. Paul Railway from Edgeley to and including C., M. & St. P. Crossing (Monango), N. Dak., thence via the Minneapolis, St. Paul & Sault Sainte Marie Railway to Oakes, N. Dak., thence via the Chicago & Northwestern Railway to Newton, thence via the Great Northern Railway to Yarmouth, Minn., thence via the Great Northern Railway to Fargo, N. Dak., thence via the Great Northern Railway to Moorhead, Minn.

EASTERN BOUNDARY LINE.—Including points located on a line beginning at Moorhead, Minn., thence following the line of the Great Northern Railway through Yarmouth, Herman, Morris, and Benson to Wilmar, Minn., thence via an imaginary line through Hutchinson to but not including Norwood, Minn., on Minneapolis & St. Louis Railroad, thence just west of the Minneapolis & St. Louis Railroad to but not including St. James, Minn., thence just west of the line of the Chicago, St. Paul, Minneapolis & Omaha Railway to the southern boundary of the State of Minnesota, thence following the southern boundary of the State of Minnesota to Steen, Minn., thence via the Illinois Central Railroad to the western boundary of the State of Minnesota, thence following the eastern boundary of the State of South Dakota to McCook, S. Dak., on the Chicago, Milwaukee & St. Paul Railway.

WESTERN BOUNDARY LINE.—Including points located on a line beginning at Linton, N. Dak., thence via an imaginary line through Mobridge, S. Dak., on Chicago, Milwaukee & St. Paul Railway to Gettysburg, S. Dak., on Chicago & Northwestern Railway, thence via an imaginary line just east of the Chicago & Northwestern Railway to and including Blunt, S. Dak., thence following the line of the Chicago & Northwestern Railway to Pierre, S. Dak.

SOUTHERN BOUNDARY LINE.—Including points located on a line beginning at Pierre, S. Dak., thence following the north bank of the Missouri River to Yankton, S. Dak., thence via the Chicago, Milwaukee & St. Paul Railway through Vermillion and Elk Point to McCook, S. Dak.

It is further ordered, That the petitioners herein be, and they are hereby, authorized to establish and maintain commodity rates from points of origin located in the territory hereinbefore described to California terminals, and to maintain higher rates to intermediate points, provided the rates to said intermediate points do not exceed the rates on the same commodities from the same points of origin to California terminals by more than 7 per cent.

The Commission does not hereby approve any rates that may be filed or continued under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any provision of the act.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

BEFORE THE
Interstate Commerce Commission.

APPLICATIONS FOR RELIEF UNDER THE FOURTH
SECTION: Nos. 205, 342, 343, 344, 349, 350, and 352.

No. 1665.

RAILROAD COMMISSION OF NEVADA

v.

SOUTHERN PACIFIC COMPANY ET AL.

No. 1796.

MARICOPA COUNTY COMMERCIAL CLUB

v.

SANTA FE, PRESCOTT & PHOENIX RAILWAY COMPANY
ET AL.

Decided June 22, 1911.

SUPPLEMENTAL REPORT OF THE COMMISSION.

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v.

**SANTA FE, PRESCOTT & PHOENIX RAILWAY COMPANY
ET AL.**

Submitted March 22, 1911. Decided June 22, 1911.

1. Previous order herein as to class rates from points in eastern defined territory to points in Nevada allowed to stand; but as to commodity rates an adjustment of the relation between such rates to the Pacific coast and the rates to interior Nevada points should be made under construction of present fourth section.
2. Comparison of provisions of old fourth section and new fourth section made, and the varying views considered and discussed; and the amended fourth section held to be a provision of law within the proper scope of congressional jurisdiction.
3. The proviso authorizing this Commission to permit exceptions to the general prohibition of the fourth section is not a grant of arbitrary or absolute power, but its exercise must be limited and conditioned upon the presence in special cases of conditions and circumstances which would make such exceptions legal and proper and in no wise antagonistic to other provisions of the act.
4. It must be affirmatively shown by the carriers seeking such exception that injustice will not be done to intermediate points by allowing lower rates at the more distant points.
5. The intentment of the amended law is to make its prohibition of the higher rate for the shorter haul a rule of well-nigh universal application from which this Commission may deviate only in special cases and then to meet transportation circumstances which are beyond the carriers' control.

6. Survey of the facts involved in the transcontinental situation made; history of the long-fought struggle between the transcontinental railroads and the ocean carriers given; leading up to the present basis of rail rates from the Atlantic seaports to the Pacific coast; and *Held*, That in the light of this history it is not to be gainsaid that the transcontinental lines must give consideration to sea competition.
7. Upon the facts disclosed by the record; *Held*, That the carriers herein involved have not shown that undue discrimination was not effected by their rate adjustment between points in Nevada and points in California, nor have they established that the rates to the coast cities, if extended by them from eastern points outside the zone of water influence, are not fully compensatory. Transcontinental carriers ordered to readjust their present rates from eastern defined territories to intermediate points as compared with such rates from said territories to Pacific coast points.

Cleveland H. Baker, J. S. Shaughnessy, and H. F. Bartine for Railroad Commission of Nevada.

F. A. Jones for Maricopa County Commercial Club and Arizona Commercial Association.

George J. Stoneman and E. S. De Pass for Arizona Railway Commission.

Edward Chambers, Gardiner Lathrop, and G. T. Nicholson for Atchison, Topeka & Santa Fe Railway Company.

Hale Holden and E. C. Lindley for Chicago, Burlington & Quincy Railroad Company.

N. H. Loomis, P. L. Williams, C. W. Durbrow, W. W. Cotton, G. W. Luce, H. M. Garwood, J. C. Stubbs, and H. A. Scandrett for Union Pacific Railroad Company, Oregon-Washington Railroad & Navigation Company, Oregon Short Line Railroad Company, and Southern Pacific Company.

J. P. Blair for Morgan's Louisiana & Texas Railroad & Steamship Company.

James C. Jeffery for Missouri Pacific Railway Company and Denver & Rio Grande Railroad Company.

H. C. Barlow for Chicago Association of Commerce.

Louis D. Brandeis, D. O. Ives, and S. C. Mead for Merchants' Association of New York, Boston Chamber of Commerce, and 16 other eastern commercial organizations.

Edward M. Cousin for The Dalles, Centralia & Chehalis, and Willamette Valley Railway Exchange.

R. H. Countiss for Transcontinental Freight Bureau.

P. W. Coyle for Business Men's League of St. Louis.

N. B. Kelly for Philadelphia Chamber of Commerce.

E. J. McVann for Omaha Commercial Club.

J. N. Teal for Portland Chamber of Commerce, Seattle Chamber of Commerce, and Tacoma Traffic Association.

James J. Wait for Chicago Association of Commerce.

E. E. Williamson for Shippers' Association of Cincinnati.

Miner P. Goodrich for San Pedro Traffic Bureau.

SUPPLEMENTAL REPORT OF THE COMMISSION.

LANE, *Commissioner*:

It is now nearly a year since the Commission issued its order establishing class rates from eastern points to stations in Nevada and Arizona. These decisions are reported in 19 I. C. C. Rep., 238 and 257. At that time it was announced that the question of commodity rates was reserved for later consideration. The contention of Nevada had been that under all provisions of the act to regulate commerce the rates extended by the railroads to the Pacific coast terminal cities, such as Sacramento and San Francisco, should be granted to Nevada. By reference to the previous report it will be seen how insistent was the claim that to charge any higher rate to Nevada points than was given to Sacramento was a violation of the fourth section of the act prohibiting lower rates at the more distant point; that there was no such water competition at these coast terminals as justified the preferential rates given to them; that the rates to the coast were in fact reasonable and not abnormally low; that this was recognized by the carriers in making their divisions east of Ogden in that they accepted upon business destined to points in Nevada the same divisions upon transcontinental traffic as when destined to the coast terminals; and that whatever shadow of water competition remained which was potent in reducing the rate below a fully normal standard of reasonableness was more than offset by the shorter haul to the interior points, making the coast rate a reasonable one for the shorter haul to this intermountain country.

After considering very fully these propositions the Commission came to the determination that rates on traffic between the Atlantic and Pacific coasts were affected by the presence of the ocean, and while the carriers made a blanket class rate to coast terminals upon a \$3 scale (the blanket covering the whole of the continent from Denver, Colo., to Portland, Me.), a reasonable first class rate to Reno, Nev., would be \$2.90 from Chicago and \$3.50 from New York. The railroads have construed this finding to mean that a maximum reasonable rate from ocean to ocean by rail would be \$3.70, and have notified the Commission that upon such a basis class rates would be graded down in accordance with the requirements of the fourth section.

Before the Commission came to deal with the matter of commodity rates Congress amended the fourth section of the act with this very intermountain situation distinctly in mind, as the Congressional debates disclose. Accordingly, after further hearings had been had with reference to commodity rates, the Commission went into an extensive inquiry as to the justification which the carriers could give for charging higher rates at intermediate than at terminal points.

At the time the last report in this case was issued the Commission had before it the alternative of fixing a low scale of class rates, making no exceptions thereto by the establishment of commodity rates, or the allowance of a high scale of class rates and taking the classification a number of articles upon which special commodity rates would be fixed as exceptions to the classification; the latter, as is generally known, being the manner by which the carriers have adapted themselves throughout the years have adapted their rates to the movement of traffic; the foundation of a railroad tariff being its classification upon which is imposed a scale of graded rates with reference to such classification. Commodity rates are in essence exceptions to the classification based upon a belief in the economic expediency of such course. For reasons that it is not necessary here to present, notably the fact that the carriers had theretofore extended a number of commodity rates to certain intermountain points, the Commission saw fit to follow the latter of these two methods, allowing a high scale of class rates, purposed proceeding to the establishment of a number of commodity rates adapted to the commercial needs of the Nevada shippers. Reno, it will be remembered, had but two or three score of such commodity rates, while Salt Lake City on the east had something more than 200, and Spokane on the north some 600, while the terminal cities had commodity rates covering over 3,000 different articles. Nevada's demand was that she should be placed on a parity with her western neighbors, that all the commodity rates given to them should be extended to her. The Commission was proceeding to make such selection of commodity rates as seemed proper when the law was amended as already noted, so that there arose the third alternative of giving application to the fourth section so far as Nevada's traffic was concerned.

We have decided to allow our previous order as to class rates to stand, and, instead of fixing commodity rates, proceed in accordance with the appeal of the original complaint, but more particularly in compliance with our understanding of the meaning of the new section to seek an adjustment of the relation between the rates to the coast cities and the rates to the interior points.

For convenience the new section four and the old section are placed in parallel columns, the words omitted from the old section being in italics, while those inserted in the new section are likewise placed in italics.

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, *under substantially similar circumstances and conditions*, for a

SEC. 4. (*As amended June 18*) That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a

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shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act.

distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this Act; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: *Provided, further,* That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the Commission, in accordance with the provisions of this section, until a determination of such application by the Commission.

Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competition points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rates upon changed conditions other than the elimination of water competition.

In accordance with the requirements of this provision the trans-continental carriers parties herein filed applications within the prescribed period asking for relief from the drastic prohibition of the fore part of this section and offering justification for the existence of higher rates at stations in Nevada than at Sacramento and San Francisco, the more distant points. These applications came up for consideration with the new hearing on this case, and not only was extended argument had thereon but new evidence was taken as to those peculiar conditions obtaining on the Pacific coast which might justify departure from the law's command.

THE NEW FOURTH SECTION.

Before proceeding to the consideration of the facts it may be well to ask what this new law means. It would avail nothing useful to review the many constructions which have been urged upon the Commission. They vary in plausibility and lead to different ends. One of the most interesting is that presented by a group of shippers who urge that by the elimination of the words "under substantially similar circumstances and conditions" Congress has deprived the Commission of any standard by which it can determine whether a carrier shall be granted relief; for without these words as a guide, and no other standard being substituted, the provision becomes a clear delegation of legislative power which may be exercised arbitrarily, and therefore the proviso under which exceptions may be allowed becomes void and the section stands as if the proviso did not exist—an absolute long and short haul provision. This, it is said, was done with purpose, indeed with cunning. The section was the result of a compromise between the two elements in the national legislature which had been compromising as to this section ever since the act to regulate commerce was first proposed. There have been those who favored an absolute prohibition and those who favored a prohibition with exceptions. When these two forces met, after long and fruitless discussion, the present compromise section was suggested. This, it is said, was acceptable to the radicals—the absolutists, so to speak—for they believed that without these words, "under substantially similar circumstances and conditions," in the act the proviso would be unconstitutional and the provision would become clearly mandatory and a perfect prohibition against the charging more for the shorter than the longer distance. Quite naturally there is a still further view presented, that if the proviso is unconstitutional and falls for this reason the entire section is destroyed.

From these extreme views there are modifications of varying degree, with all or any of which it seems now unnecessary to deal. This Commission is performing a function for Congress which the legislature itself can not directly exercise because of the multiplicity of its duties. We are not inclined to any view which renders the act of Congress unconstitutional, much less do we look with kindness upon a construction which makes the act of Congress absurd.

PURPOSE OF CONGRESS.

The simple truth is that Congress determined upon strengthening the long-and-short-haul section. Members of Congress representing those portions of our country against which there was the greatest discrimination presented amendments to the fourth section that

would make it rigid, inflexible, absolute. Against these amendments the carriers themselves made protest that was supported with reason. The Commission itself, although the opportunity had frequently been presented to it, has never indorsed a rigid long and short haul section. Indeed, the present provision is drawn along lines which received the tentative approval of the Commission. Because those who advocated the absolute clause realized that there might be certain circumstances under which such a provision would do grave injustice to the carriers, they yielded to those who were in opposition to such a provision. At the same time, however, they insisted that the long and short haul section should be made more strong, more certain, and more effective. It was their complaint that by reason of the construction that had been given to the language "under substantially similar circumstances and conditions" the courts had devitalized this provision of the law and had rendered it of no value either to the south or to the far west, where its provisions were most needed. The result of this fusion of ideas was the present section, which was supposed to represent two things: The elimination of the words which had by judicial interpretation played, as it was believed, such havoc with the law; and, on the other hand, the stiffening of the fore part of the section, which was its vital portion. In short, Congress intended that the law should say that, as a general rule, there should be no lesser charge to the more distant point, but it was not willing to say that there should not be some exceptions to this rule. The railroads, however, were not to make these exceptions themselves. Such exceptions were to be made only upon petition to the Commission upon public justification being shown.

Here, however, we come to the criticism that a standard is not set by which this Commission can say whether an exception shall be made or not; in other words, that the fourth section, instead of being one which lodges the power in the Commission subject to a fixed criterion, vests such power to make exceptions arbitrarily in the Commission, subject only to its own caprice. The latter is a construction of this law abhorrent to the theory of our institutions, and certainly not to be presumed as the one which Congress intended; and we venture the thought that a study of the history of this section since 1887 and the debates thereon in Congress, more especially the consideration that was given to this provision during the session of 1910, lead to a construction that is more simple, and entirely consonant with the power of Congress and with the theory of the entire act.

Clearly section four is at least a continuance of the stringent prohibitions against discrimination which are found in the preceding sections. In section two the carriers are told that they must not prefer

one individual over another in the matter of rates. This is an "equality clause," as the English courts style it; and it was taken from their law. All men for the same service are to have the same rate. And then, moving on to the next section, we find it made unlawful to give a preference, not only to a person but to a locality or to a particular description of traffic. Naturally all traffic can not be treated alike, nor all communities given the same rates, so that the prohibition against these forms of discrimination is limited by the expression that such preferences or advantages which are undue or are unreasonable are not to be permitted. Because these words "undue" and "unreasonable" are used in the statute, it does not follow that the Congress attempted to lodge arbitrary power in the hands of the Commission in deciding when a preference was undue, nor can it be said that the presence of these qualifying words in any way minimizes the very direct declaration of Congress that there should be no preference as between localities. Congress itself could have undertaken to make rates, to establish relationships between communities and between commodities. Because of inconvenience this method was not followed, but it laid down certain rules which its administrative representatives must follow, and we may take into consideration those various circumstances which properly would have acted upon the mind of the legislature in determining what was unreasonable, undue, or unjust. We can not act arbitrarily, for we must have reason. The exercise of judgment necessarily implies some play for the individual mind; for all men will not come to the same conclusion from the same set of facts; they do not see with the same perspective nor regard things from the same standpoint.

Now, the Congress has pursued, it seems to us, precisely the same theory in regard to the fourth section that it pursued in regard to the first, second, and the third sections. The fourth is but a definite continuation of the policy it was announcing throughout the whole act. Discriminations must stop, viz, undue discriminations. Preferences and advantages must be put an end to—those, to be sure, that are undue and unreasonable. The rule is absolute; but there is a modification to this rule which allows the exercise of a wise and a judicial discretion. So with reference to the long and short haul section. It is in its nature a discrimination for a community that is nearer New York to be charged a higher rate upon freight from New York than a community that is at a greater distance from New York, the same line being used for the traffic. Upon its face nothing could appear more unjust than the relationship that exists between the intermountain cities such as Reno and the coast cities such as San Francisco.

And Congress 24 years ago, having in mind such situations throughout the country (for this the debates and the Cullom report evidence), sought to condemn such discrimination, and for the public welfare to put an end to a situation that was so provocative of complaint and created such friction between the shipping public and the transportation agencies. The state has an interest of the highest order in securing harmony of relationship between the railroads, which are the people's highways, and the shipping public. It has a political interest in seeing that communities are not embittered against each other; that the people of Nevada, for instance, do not feel that they are oppressed and placed at a disadvantage by reason of favors extended to their neighbors on the west of them by the railroads. No one can doubt that it is within the proper function of the state to make rules by which peace will be established between cities as between individuals, and this Commission was erected so that there might be a tribunal to which appeal could be made by that community which felt itself wronged by reason of an advantage given to a rival community. For 20 years this Commission has labored to secure laws and their enforcement which will lead to the destruction of those preferences as between individuals, which were a cause of a bitterness between business rivals, and within the last few years we have indulged the confidence that the practices under which such preferences thrived had fallen into neglect and some degree of disgrace. The more difficult labor of the Commission latterly has been to adjust difficulties as between communities, and we have as one guide in this respect the fourth section of the act. Congress felt the old section to be inadequate; it substituted another; it cast the burden upon the carrier of establishing its right to an exception from the general rule which it lays down and to which it expects adherence—the shorter haul shall not be charged the higher rate. So, as we feel our way back through the vast mass of legislative and judicial construction touching this particular section of the act (which in most part serves more to confuse than to clarify the problems confronting us), we come at the end of the long and devious journey to section four as originally reported by the Cullom committee in 1886. The Senate select committee, of which the now venerable Senator Cullom was chairman, found itself in precisely the same state of mind relating to this problem that we know by Congressional history to have been that of the last Congress which dealt with this problem, for in the Cullom report it is said that—

No question which can enter the problem of railroad regulation has given the committee more perplexity than that relating to the utility and expediency of legislation prohibiting a carrier from charging more for a shorter than a longer haul under any circumstances; not that we have any doubt as to the injustice of such a charge under most circumstances, but because it seems inexpedient to enforce such a regulation under all circumstances.

Being, therefore, of the mind that there should be such a general rule, subject, however, to proper exceptions, the Cullom report suggested this section four:

Section 4. That it shall be unlawful for any common carrier subject to the provisions of this act, to charge or receive any greater compensation in the aggregate for the transportation of passengers or property for a shorter than for a longer distance over the same line in the same direction, and from the same original point of departure, if such greater charge for the shorter distance constitute an unjust discrimination; but such greater charge for a shorter distance shall be presumptive evidence of unjust discrimination, which may, however, be rebutted by the common carrier.

Upon application to the Commission appointed under the provisions of this act, such common carriers may, in special cases, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property, and the Commission may, from time to time, make general rules covering exceptions to any such common carrier in cases where there is competition by river, sea, canal, or lake, exempting such designated common carrier from the operation of this section of this act; and when such exceptions shall have been made and published, they shall have like force and effect as though the same had been specified in this section.

The language of this first paragraph reveals the philosophy upon which this section was originally based. The Congress is continuing its declaration of antagonism to unjust discrimination. This provision is not a distinct and separable part of the act; it is but one declaration or pronouncement as to what Congress regards as inimical to public policy. Instead of allowing this kind of discrimination to remain in obscurity as others are, the law separates and distinguishes it by naming it. To charge more for the shorter haul over the same line shall be presumptive evidence of unjust discrimination, and the burden is cast upon the carrier justifying a condition which is *prima facie* unlawful and unjust.

If, now, we turn again to the new section four and read the first paragraph again, we see that it varies in no degree whatever in spirit and intent from this section reported to the Senate nearly 25 years ago. We have reverted to the idea of an earlier day, broadened, perhaps, slightly. The test which the Commission must now apply to determine whether the carrier may be given the advantage of an exception to the general rule of section four is the same test that it may apply with respect to any other discrimination or inequality. There is incorporated in section four every standard set up by Congress as a guide to this Commission which is to be found in any section of the act. And the leeway or discretion which may properly be exercised by this Commission under any other section may properly be exercised under this section. For instance, it is for us, acting within the limitations of the law, to determine what is a reasonable practice for a common carrier to pursue. This calls for the widest exercise of discretion. And if our judgment is arbitrary, or we transcend those limitations properly binding such a tribunal, our act may be

set aside. But in every decision of this Commission, under any section whatsoever, there enters the element of personal judgment, just as in every verdict of a jury the result is colored necessarily by the mental attitude and experience of the juror.

CONSTITUTIONALITY.

The Commission has not been left without a proper test to apply: The test of justness, of reasonableness, of discrimination, of preference and advantage; the test of fair play as between communities. With this construction of the statute, which is historically supported, as well as by those more or less variable measures known as the canons of statutory construction, the statute becomes both practicable and constitutional; we are neither forced to disregard it as a whole nor to eliminate any of its provisions; it does not become an absolute long-and-short-haul section, because the proviso permitting of exceptions remains; the provisional clause does not relegate the entire section to the limbo of unconstitutionality, because we find that it may be administered in thorough harmony with the whole act, part of which it is; and the tests and standards to be applied are not matters of fancy, but are the express and positive words in the law itself. In short, Congress has undertaken to specify distinctly one practice which it wishes especially to destroy and charges this Commission not to permit it to obtain unless such discrimination, such preference, such practice may be shown not to be a discrimination that is unjust, a preference that is undue, or a practice that is unreasonable, because of peculiar facts and conditions.

All the burdens of establishing these justifying conditions are cast upon the carriers; the doubts are to be resolved against them; the wish of Congress is expressed and clear. The carrier may no longer float along as under the old section, needing no other justification for its policy than its own conscience, but must set forth clearly what it is doing and convince those constituted to judge that this exceptional policy in a special case is in harmony with the intent of Congress that communities shall be treated fairly, one with relation to the other. The more distant community shall not be preferred over the nearer one because it may please the carrier to develop the one and retard the other. As it costs more to carry traffic a longer distance, so the rate to the farther point shall not be made less than the rate to the nearer point merely because of railroad policy. So far the section establishes a shipper's principle, and is in sympathy with and expressive of the most primary principle of equality. The proviso, however, is primarily for the carrier's benefit; it recognizes that the railroad may engage in competition for traffic to more distant points at lower rates than may be charged to intermediate points without

doing injury or injustice to such intermediate points. But to this policy a limit may be, indeed must be put.

There is in our minds no doubt but that the Congress can put into effect a long-and-short-haul clause, such as is here considered. Similar provisions obtain in the laws of Arkansas, Indiana, Kentucky, Iowa, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, North Dakota, Ohio, South Carolina, South Dakota, Texas, Vermont, Virginia, and West Virginia. The provision of our law is almost identical with that of Kentucky, which was upheld by the Supreme Court in the case of *L. & N. R. R. Co. v. Kentucky*, 183 U. S., 503, in which the court said (page 515):

But if it be competent for the state, as this argument supposes, to wholly forbid, in every case, and by every carrier, the charging of more for a short than a long haul, it is not easy to see why the state may not permit such charges through the action of a tribunal authorized to investigate the subject and to afford relief in cases deemed proper. Such a provision is *ex gratia*, in the direction of exonerating the carrier from what the argument concedes to be a lawful limitation. Such an exercise of discretion by the railroad commission would be no more arbitrary than if the Constitution had authorized the legislature to allow in special cases a greater charge for the shorter than for the longer distance, and to prescribe the extent of such excess. We are not prepared to accept the view that the railroad commission, in acting under section 218, is merely an administrative body, and as such subject to judicial review. It is rather a constitutional tribunal, empowered, *upon the application of the carrier*, to investigate the special circumstances and conditions which are claimed to justify the relief of the carrier from the operation of this section. It is not compulsory upon the carrier to make such application for relief to the commission. If he does not choose to do so, he will continue to operate his railroad under and subject to the constitutional prohibition. If he elects to resort to the commission, he can no more complain that its judgment is final, when it is against his contention, than the community affected can complain when its judgment is in his favor.

It has been said that while a sovereign state by incorporating such a provision in its constitution could make it the law it was beyond the power of Congress to enact a statute of this character in that Congress itself legislates under constitutional limitations. It is not profitable to argue this attenuated proposition. The fundamental right of Congress to regulate the rates and the practices of the carriers engaged in interstate commerce takes from these carriers the power to set up a policy of their own in contravention of the determination of the national legislature. Until a carrier could demonstrate that its property was being confiscated by the enactment of a hard and fast long-and-short-haul clause it could not be heard to complain against the enactment of such a law. But this is no such provision. This section as it stands now reveals the mind of the Congress that in fairness to the carriers they may be allowed in exceptional cases to meet exceptional conditions at distant points, but these exceptions shall be controlled, not by the whim of the carrier or by its own desire to give preference or to increase earnings. The public will permit

the discrimination against the nearer points if it is reasonably established that the carrier will suffer if such discrimination is not permitted, and, too, that the public will not suffer by such procedure. The proviso of the act is an extension of governmental leniency. It is made in the carriers' interest, and if it were removed from the act there is doubt if the carriers themselves could be heard to complain.

In dealing with this case we shall regard these propositions, therefore, as established:

(1) That the fourth section as amended in 1910 is as a whole constitutional, a provision of law within the proper scope of Congressional jurisdiction.

(2) That the proviso authorizing this Commission to permit exceptions to the general prohibition of the section is not a grant of arbitrary or absolute power, but its exercise must be limited and conditioned upon the presence in special cases of conditions and circumstances which would make such exceptions legal and proper and in no wise antagonistic to other provisions of the act.

(3) That it must be affirmatively shown by the carriers seeking such exception that injustice will not be done to intermediate points by allowing lower rates at the more distant points.

(4) That the intendment of the law is to make its prohibition of the higher rate for the shorter haul a rule of well-nigh universal application from which this Commission may deviate only in special cases and then to meet transportation circumstances which are beyond the carriers' control; that is to say, a carrier shall not prefer the more distant point by giving it the lower rate because of any policy of its own initiation, but if at the more distant point it finds a condition to which it must conform under the imperious law of competition if it would participate in traffic to that point it may discriminate against the intermediate point without violating the law, provided it establishes such necessity before the Commission. But to this discrimination there may be a limit set by the Commission. The discrimination may not be such as to offend the reasonable standards of the law, for it is said that the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.

In what, then, does the new section four differ from its predecessor? It is not, perhaps, necessary to answer this question in all possible detail. Two things are obvious: Instead of the burden being upon the complaining shipper to show the injustice done and to parallel step by step the circumstances and conditions at the two contrasted points, the burden now rests clearly upon the shoulders of the carrier to make good its own title to an order of exception; and, further, this important modification, that by the elimination of the words

"under substantially similar circumstances and conditions" Congress has taken from the law an embarrassing modification of the prohibition against the higher charge to the intermediate point. Congress cut these words from the act for the same reason that it cast the burden upon the carriers to prove their need for the exception; it wished to reduce the discrimination in rates between points to a minimum and to make the pathway to the exception difficult, and not easy.

REVIEW OF FACTS.

We turn now from consideration of the law to a survey of the facts involved in the transcontinental rate situation. It is more than twenty years since this Commission was first petitioned to extend to intermediate points the west-bound rates that were given to the Pacific coast terminals. The agitation for a rigid application of the rule that a more distant point should not enjoy a lower rate has persisted throughout the years, manifesting itself before the Commission, the courts, and each succeeding session of Congress at which consideration was given to the amendment of the act to regulate commerce. The intermountain country, in which Reno is a typical point, has led in this agitation. A shipper finds it difficult to reconcile himself to paying \$500 a car for the transportation of a carload of merchandise to his own city when that same carload will be carried from the same point of origin through his city to a point 500 miles beyond for \$300. Such a condition appeals to all as *prima facie* unjust. The railroad, however, answers that it grants the \$300 rate, not because it desires to, but under compulsion of water competition, and that the \$500 rate is reasonable for the service that is given to the intermediate point.

The carriers do not deny that upon them rests the burden of establishing the reasonableness of the condition that obtains. Conscious of its apparent unfairness, they insist that it does no injury to the points upon which are imposed the higher rates, and that it would be contrary to the interest of the carriers and to the broadest public policy were the present system changed. We come thus to inquire: What is the transcontinental scheme of making rates, and what are the causes which have produced it? Has there been real competition between rail and water carriers, and what has been its effect? To what extent, if at all, does this present rate scheme rest upon the active rivalry of ocean and rail lines?

WESTERN TERMINALS.

If one reverts to the original report in this case and studies the map therein printed, it will be seen that what is known as transcontinental territory extends from Colorado on the west to Maine on the

east, and from this blanket the same rates are given practically upon all classes and commodities to what are known as Pacific coast terminal points. Of these latter the principal ones are Seattle, Tacoma, Portland, San Francisco, Los Angeles, and San Diego. In Oregon but two places enjoy these rates—Astoria, at the mouth of the Columbia River, and Portland, at the junction of the Willamette and the Columbia rivers—to both of which points steamships and sailing vessels carrying Atlantic seaboard traffic have easy and constant access. In southern California, San Diego is upon a harbor and is a port of call for steamships engaged in interoceanic traffic. Los Angeles, however, is not upon the sea; at least has not been until recently. The city limits of Los Angeles have now been extended so as to include a strip of land extending from that city to the port of San Pedro, which has become the port of Los Angeles, and the citizens have raised a fund for the improvement of the harbor and its water front and the building of a municipal line of steam railroad for the 16 miles between the heart of the city and the water's edge. This anomalous condition of things, however, exists—that until a recent order of the Commission the little city of San Pedro, through which traffic by water moved to and from Los Angeles, was denied terminal rates, although the city of Los Angeles, which was inland, enjoyed such rates. Many cities and towns an equal distance from the sea-coast but equally accessible thereto do not enjoy terminal rates, and some immediately upon the coast, such as Ventura and Santa Barbara pay higher rates than does Los Angeles. How, then, is this preference of Los Angeles justified? The answer of the railroads is that the benefits of sea competition were extended to Los Angeles by an arrangement between the Santa Fe Railroad and the American-Hawaiian Steamship line, the Santa Fe publishing an extraordinarily low schedule of rates upon traffic transshipped at San Diego and destined to Los Angeles. In 1900 the American-Hawaiian Company put on a line of steamships by way of the Straits of Magellan, and for the last five years has had a considerable fleet engaged in this through business by way of the Tehuantepec Railroad, which is controlled by the Mexican Government. This steamship line stops at San Diego, but does not stop at the port of San Pedro. The Santa Fe Railroad extends to it and other water carriers a schedule of class rates from San Diego to Los Angeles approximately the same as that obtaining over the San Pedro line from San Pedro to Los Angeles, this schedule being based on a 16-cent rate per 100 pounds for first class traffic. Thus Los Angeles, by a combination of circumstances becomes a "terminal point."

Proceeding northward to central California, the first terminal that we find is San Jose, which is some ten or twelve miles removed from the Bay of San Francisco and can not be reached by water; but it

enjoys the advantage of being upon the original line of railroad which was built around the southern end of the Bay of San Francisco. Moreover, it is possible to transport freight from San Francisco to San Jose by water and wagon, and by rail, for perhaps \$1 a ton.

Without continuing this inquiry into the geographical position of the various terminals, it may be stated in general that around San Francisco there has been thrown a cordon of terminal points extending from San Jose, on the south, to Marysville, on the north, to which points terminal rates are given—that is, rates which are the same as to San Francisco—but to none of these points do the ocean steamships ply directly in the carriage of westbound freight. That is to say, although San Francisco is the only city in central California which enjoys direct water competition with the Atlantic seaboard, the railroads serving that city have, as a matter of policy, given to many of her neighbors the same rates that she enjoys, and because of railroad competition the steamship lines which reach San Francisco now give these cities the same rates as are given to San Francisco. The steamships absorb the local transshipment rates from San Francisco to interior points, because it has been railroad policy to establish these additional terminals not directly upon the ocean and not served immediately by the ocean carriers. The justice of this policy we do not herein pass upon. The city of San Francisco insists most strenuously herein that if the carriers justify a variation from the requirements of the long-and-short-haul section by reason of the fact that ocean carriers can deliver Atlantic seaboard business at that port for a certain figure, it is unfair to extend the advantage which San Francisco enjoys to interior points not equally well situated. The interior cities not so favored say that if such extension is made to these interior bay or river points it should logically be carried farther east to such cities as Reno, Fresno, and San Bernardino, because the granting of those rates to points where they are not compelled is an admission of their reasonableness or else it is a pure matter of railroad policy which effects a discrimination against an actual sea competitive point.

From this rough sketch of the Pacific coast terminal situation it is at once perceived that it is not the result of the rigid application of any principle based entirely upon sea competition, for terminal rates are given to cities which are not upon the ocean, and the railroads themselves in some cases have forced the sea carriers to absorb inland rates in order to meet railroad competition at these interior terminal points. In passing it may be said that the population of California is approximately two and a half millions, of which it is estimated by Mr. Chambers, of the Santa Fe, that two million are at, or within 30 miles of, terminal points.

Turning our eyes eastward and regarding the territory in which originates this traffic it is at once appreciated that the same rate applies whether the traffic comes from New York harbor or from Chicago or Kansas City. Now, it is not contended that there is any direct water competition from Chicago or Kansas City, or the territory intermediate between the Missouri River and New York. How, then, does it come about that the same rates apply from inland points as from seaports? To answer this question it may be well to look back over the very remarkable history of the long-fought struggle between the transcontinental railroads and the ocean carriers.

THE TROUBLOUS SEA.

In 1869, when the Union Pacific and Central Pacific railroads were united at Promontory Point, Utah, there was no such thing as a transcontinental rate, excepting as it was made up of a combination of locals. In fact, at that time it was not expected, so Senator Stanford has testified before a Senate committee, that there would be any real competition between the transcontinental railroad lines and the ocean carriers. The original purpose of constructing the Central Pacific road, so far as its California promoters were concerned, was to carry eastward from the Pacific coast to the interior, and the rates made across the Sierra Nevada Mountains were made to meet and overcome the then existing competition of the mule team. It was not the primary purpose to extend this road across Nevada, but only to furnish a means of communication between the city of Sacramento and the rich mining towns along the ridge of the Sierra Nevadas and on their eastern slope. Confessedly it was the lure of the government subsidy which induced the extension of this line to the eastward. The purpose of the Central Pacific was to act as the distributor of the ocean-borne freight which was brought into the Bay of San Francisco by sailing ship coming in around the Horn; and for some time following the establishment of this through transcontinental route no serious effort was apparently made to induce the all-rail overland movement of traffic, which did not require especial or express service.

The first through rate published was an open rate of \$8 per 100 pounds, first class. This rate was scaled down, being lower from Pittsburg, and still lower from Chicago and other points. When competition was begun with the clipper ships out of New York, class rates were reduced to a \$6 scale, and these were graded from the east westerly. Commodity rates were also at this time established in an effort to take from the ships important volumes of business. These open rates, however, were found to be unsuccessful in developing any considerable amount of transcontinental business, owing to the fact that whatever rates the railroads made were met by the boat lines.

Accordingly in 1877 the Union Pacific and Central Pacific, which worked together in this matter, instituted what is known as the special contract system, under which they published two rate sheets, one known as the "white list" and the other as the "pink list." The white list contained the open or public rate; the pink list contained the contract rate. Contracts were made with individual shippers that if they would give to the railroad line all of their traffic for a year to the exclusion of ocean carriers they would have a rebate down to the figure fixed in the pink list.

The battle began in earnest at this time between the railroads and the ocean lines. Whatever competition there had been before was insignificant when compared with that which followed the year 1877. At that time the railroad interests evidently determined upon driving the ships from the sea, and they very proudly admit that they succeeded in this effort at least to the extent of nullifying or controlling the water competition. The jobbers of the Pacific coast were individually dealt with; their waybills by the water lines were furnished to the railroad, from which it estimated the volume of traffic and the amount of charges paid thereon by the shipper. Upon this basis a rate was made by adding to the ocean charge an additional allowance for the saving in insurance arising out of movement by rail, the saving in interest upon the value of the freight, and an additional amount for the comparative certainty of delivery and expedition. Different rates apparently were made to different shippers. This secret contract system, by which a rate was made to each individual, firm, or shipper, was a logical application of the principle that the carrier should charge what the traffic would bear. For several years this system was successfully pursued with increasing advantage to the railroads; but under the pressure of strong popular agitation, and owing to the fact that the shippers were in many cases found to have broken faith, the railroads determined upon again publishing but one rate. To arrive at this rate they adopted a policy of "harmonization," as it was termed; they averaged the rates upon various commodities which had been charged to various shippers and made a new schedule of rates, from which they varied as emergency might require or expediency advise by the current method of rebating.

Thus far we have taken no account of the Panama route, which had been open and operated since the early days of the rush to the gold fields. This route was in the control of the Pacific Mail Steamship Company. In 1871, hardly two years after the opening of the trans-continental rail route, the Union Pacific and Central Pacific railroads entered into agreement to subsidize the Pacific Mail, buying its space at an agreed figure, and often running the steamships empty. This arrangement was continued until 1881, when the steamship line was

turned over to an association known as the transcontinental association, which continued the arrangement until 1893, so that during this period the Panama route offered no serious competition to the rail lines. And to continue the history of this negligible factor in sea competition, it may at this time be said that the Pacific Mail Steamship Company is now controlled, through stock ownership, by the Southern Pacific Company, and has been since the year 1900.

Throughout this period of competition between ocean and rail lines we find this interesting rate condition to have existed: *Clam rates* to Pacific coast terminals increased with the distance and were higher from Atlantic seaboard points than from interior points; commodity rates, however, which were created to meet special conditions at the seaboard—the weapons fashioned for the destruction of the clipper ships—were lower at the ports than at the interior points. In the language of Mr. Luce, of the Southern Pacific—

Commodity rates were scaled up from the seaboard in the first instance, but the clam rates were scaled down from the seaboard. There was always a higher clam rate from New York than from Chicago, but often a lower commodity rate from New York than from Chicago.

In 1883 a new competitor entered the field—the Sunset-Gulf route, a water line from New York to New Orleans owned by and connecting with the Southern Pacific line from New Orleans to San Francisco. This new line was looked to by the carriers generally to “take care” of water competition, in the significant language of a Southern Pacific official. It entered upon the work with such heartiness that before long the Pacific Mail alone kept on its perfunctory way between Panama and the Pacific coast terminals. The clipper ship as a competitor had been destroyed, Pacific Mail had been subordinated, and the transcontinental lines were in control of ocean as well as land transportation.

It is the estimate of the Southern Pacific that of all the traffic moving from the Atlantic seaboard to California from 1885 up to 1901 the Sunset-Gulf route carried from 75 to 90 per cent, and of the balance practically all went by rail. The aggressive policy of the Southern Pacific Company in instituting a water line of its own between the Gulf and the Atlantic drove its water competitors out of the field and took from the rail lines all but the most insignificant proportion of transcontinental traffic. These were the fine free days when “all sorts of rates could be had and all sorts of tariffs could be found.”

THE SANTA FE ENTERS THE FIELD.

By the year 1883 competition by sea was not more than nominal. In that year, however, the Santa Fe, being completed to Los Angeles, came into the field claiming its share of transcontinental business destined to its new terminal, California. Up to its coming, and for

some years prior, commodity rates had been graded up from New York; that is to say, the rates from Pittsburg territory to California, and from Chicago to California, were higher than from New York. The theory of the rail carriers was that they should meet the competition at the point where the competition actually existed—at the seaport. But the Santa Fe had its eastern terminus in Chicago. It found the Sunset-Gulf route carrying practically all of the Atlantic seaboard business at rates below the all-rail rates—at any rate that it chose to fix. In its view it was all well enough for the Southern Pacific to send out from the Gulf its own boats that would drive all rivals from the ocean, but because it had done this service to the rail carriers it was not to follow that all the traffic was to remain in the possession of the Southern Pacific. Whatever rates, therefore, the Sunset-Gulf route chose to make at New York the Union Pacific and Santa Fe declared they would make from Chicago. This determination of railroad policy was given the name of "market competition." It was said that the great middle west was building up and should have its opportunity to compete with the Atlantic seaboard for the developing trade of California. The Santa Fe did not reach New York; the Southern Pacific did; the Santa Fe would give to Chicago and to St. Louis and to Kansas City the same opportunity to feed and clothe the people of California that the Southern Pacific gave to the people of New York and Boston. Then followed an interesting rate war, which culminated in 1887 in the installation of a new set of graded rates, this time scaling lower as they receded from the Atlantic seaboard.

The date in this case is significant, for in that year (1887) the act to regulate commerce went into effect. In this connection the testimony given by Mr. Luce, the assistant to the vice president of the Southern Pacific Company, in response to questions by the Chairman of the Commission, is illuminating:

THE CHAIRMAN. You spoke this morning of a trace, or something of that nature, which the carrier entered into just before the passage of the act to regulate commerce, about 1886, I think.

MR. LUCE. Yes, sir.

THE CHAIRMAN. If I understood you correctly, all special contract rates went out of use about 1891?

MR. LUCE. The special contracts themselves; yes, sir—1891.

THE CHAIRMAN. And then, between 1891 and the time of this trace, they were published rates?

MR. LUCE. Yes; individual lines published rates.

THE CHAIRMAN. But they were not adhered to much, as I understand it?

MR. LUCE. Not very much.

THE CHAIRMAN. I say, by rebate or otherwise—

MR. LUCE (interposing). They were departed from.

THE CHAIRMAN. Yes. Now, what was the nature of that trace? What did you mean by that?

Mr. LUCE. Just prior to that time that I had in mind; there had been a very severe war in rates. I do not know whether that was the reason for the creation of this Commission or not, but the struggle had been very disastrous; two or three lines, I think, were very much crippled, going into the hands of receivers; and just before the act was passed, effective in April, 1887, I think, the lines got together and said, "Here, let us stop this foolishness; let us have some standard of rates and see what we can do on that basis." I believe the rates were made 50 per cent of the old tariff rate that had been used for two or three years. I presume the carriers thought that it would not be judicious to put their rates right up to standard 100 per cent, so they decided on a 50 per cent tariff.

The CHAIRMAN. You mean 50 per cent more than the published rate, or 50 per cent of the published rate?

Mr. LUCE. On the published rate. The class rate at that time moved a great deal of the traffic. The commodity rates were not as many, nearly as many, as they are to-day. The commodity list has grown, as all know, year by year. I believe in 1884 there was something like 2,000 commodity rates, whereas to-day, as stated, there are about 3,300 to 3,500 articles upon which commodity rates apply.

The CHAIRMAN. Now, about what was the rate on first class along in the eighties, just before this truce of which you speak?

Mr. LUCE. I think the rate from—

The CHAIRMAN (interposing). From New York to San Francisco?

Mr. LUCE. I think the rate from New York was on a \$6 scale in those days, or \$5. I will not be sure. It seems to me it was a \$6 rate from New York, and I think \$5 from Chicago.

The CHAIRMAN. Then that resulted in putting in about a \$3 rate on first class?

Mr. LUCE. Yes. I do not recall whether the through rate from New York was put down on a 50 per cent basis or whether that 50 per cent applied only from Chicago, but my impression is that it applied from New York, although I won't be positive as to that.

Mr. LYON. I have the rate from New York, July 18, 1887, if you want it—\$3.

The CHAIRMAN. That is about what it was made when the act took effect.

Mr. LUCE. Yes.

Mr. LYON. It was \$3.10 from the Missouri River, \$2.30 from the Mississippi River, \$2.40 from Chicago, and \$2.50 from Buffalo, and \$3 from New York on July 18, 1887.

Mr. LUCE. That probably was not 50 per cent, then.

The CHAIRMAN. That means your published rates, which your line had published up to that time in the eighties, were probably about twice that much?

Mr. LUCE. Yes, sir.

The CHAIRMAN. And yet that was an effort to bring together a stability of rates, and to get more out of the traffic than you had been getting during this war, I suppose?

Mr. LUCE. Yes, sir.

The CHAIRMAN. So that as a matter of fact, prior to that, you had not been getting even as much as the \$3 basis, or the 50 per cent basis?

Mr. LUCE. No, sir.

The CHAIRMAN. It was a general departure from the so-called published rates of more than 50 per cent?

Mr. LUCE. Oh, yes.

The CHAIRMAN. More than cut in two?

Mr. LUCE. Yes. The Sunset in those days made a rate sometimes of 50 cents a hundred pounds on everything. I know we did eastbound. I think I hold the record on carrying from New York the cheapest carload that was ever carried. It was a carload of bamboo steamer chairs. I quoted a rate of 50 cents, and I think the entire carload from New York brought us \$9.40 on the weight. We carried beans as low as 25 cents. That is by the Sunset-Gulf route.

We find then with the first tariffs that were filed with the Commission a \$3 first class rate from New York to San Francisco, a lower rate obtaining from Pittsburg, a still lower rate from Cincinnati, and so by steps to the Missouri River. These graded rates remained in effect until 1889 when we find the first evidence of the institution of a great eastern blanket of class rates. This was at first not formally recognized in the tariffs, but was effected by eastern carriers through a system of rebates from the published rates.

Things appear to have gone peacefully for the next few years. The only serious competition which the railroads met by water was that of the Southern-Pacific-Sunset line from New York which apparently applied from the New York piers whatever the all-rail rates were from Chicago. Of course during this period, or any other period, until recently it is impossible to say just what the rates actually paid were. We are dealing, however, with the "paper rates."

A MERCHANT'S LINE.

Live ocean competition being out of the way, and the railroads having come to an understanding as between each other, matters went smoothly until the San Francisco merchants, in 1892, being roused to activity by a recent increase in the transcontinental rates, instituted a boat line of their own. This brought on another rate war, in which the merchants lost heavily, and rates were reduced by the rail lines to absurdly low figures. The lines east of Chicago and those west fell out over the division of the joint through rates, and for a time there were no joint through rates extending from points farther east than Chicago, and blanket rates were made by the western carriers from Chicago, Mississippi River, and Missouri River points. After the railroad lines had killed off the San Francisco merchants' steamship line, losing thereby several million dollars, they came to an agreement with their eastern connections as to a new basis of divisions and a new scheme of rate making.

Thus we come to the year 1896, at which time the blanket system at present obtaining was first authoritatively announced. This blanket extended from the Missouri River to the Atlantic seaboard. We hear very little of water competition for the next three or four years. In 1900, however, the American-Hawaiian Steamship Company established its first steamer line through the Straits of Magellan. In 1900 also, as we have already seen, control of the Pacific Mail was purchased by the Southern Pacific Company. Neither one of these facts seems to have disturbed transcontinental rail rates.

In 1906 another step forward was made in the matter of water competition by the opening of the Tehuantepec route. The American-Hawaiian Company, under an arrangement made with the Mexican

Government and with the sugar planters in the Hawaiian Islands, instituted the most satisfactory service which up to that time had obtained between the Atlantic and Pacific seaboard by water. East-bound tonnage was furnished by Hawaiian sugar, and west-bound tonnage was gathered at the Atlantic seaboard.

In 1907 the volume of west-bound business carried to Pacific coast terminals via this route was 112,395 tons; in 1908, 117,203 tons; in 1909, 204,000 tons; in 1910, 239,500 tons. The total volume of transcontinental tonnage was, two years ago, estimated by the carriers at 3,000,000 tons per annum, while the total water-borne traffic is about 10 per cent of this figure. Inasmuch as the traffic of the country increases at the rate of nearly 10 per cent per year, it would appear that in nearly four years ocean competitors of the transcontinental rail lines have been enabled to secure a total tonnage of approximately the normal increase in west-bound transcontinental freight for a single year. In giving this figure we are allowing to the American-Hawaiian line all the advantage of the accumulated business of the six years preceding 1906, in which it had in operation its steamship line through the Straits of Magellan. Considering that this carrier has reduced its time of movement between the Atlantic and Pacific to an average of a little more than 25 days and gives a service that never before has been equaled by an ocean line, the slight increase in its tonnage either evidences that all-rail rates are more attractive for the great volume of business or that the water rates are maintained at a figure so nearly approximating those extended by the rail lines as not to overcome the difference in the service.

THE OCEAN "NEUTRALIZED."

We have thus traced the history of this protracted struggle between the ocean and the land carriers that we might clearly appreciate the strategy of the railroads and its effect upon the ocean-borne traffic. One water route after another has been rendered innocuous. To meet the competition of the railroads the tendency of the ocean carriers has been to shorten the time consumed in passing by water from coast to coast. The clipper ship has been forced to give way to the steamship and the steamship has been compelled to transship by rail a portion of the distance. The routes by way of Cape Horn and the Straits of Magellan have been virtually abandoned. For nearly 40 years the Panama route has been under railroad control. When an attempt was made to reestablish this route as a vital competitor, the railroads used their own ocean-and-rail line to eliminate it from the field. So that for several years there has been but one ocean line which apparently has no railroad connection, that of the American-Hawaiian Steamship Company; and this line lives upon sufferance,

its rates being made with the knowledge of the railroad company and with a more or less definite relation to the transcontinental rail rates. Within the past few months another water competitor has entered the field, the California-Atlantic line, which has done an extensive business both east-bound and west-bound for the short time that it has been in existence, but the prophecy made by the railroad witnesses is that it will not last long.

In the light of this history it is not to be gainsaid that the transcontinental lines must give consideration to sea competition. For 30 years and more their effort has been to "neutralize and control" such competition, in the phrase of Mr. Stubbs, vice president of the Southern Pacific system. While they have subsidized, bought, and controlled the water carriers, there has always been present to the mind of the traffic manager of the transcontinental railroad the existence of the ocean and the possibility of its use. Without a ship upon it the ocean has the power to restrain, in some degree, the upward tendency of rail rates. A railroad may not safely indulge its desire to impose all the traffic will bear between two ocean ports, and it may truly be said that the least poetical of railroad traffic managers never looks upon the ocean without a sense of awe.

The railroads, moreover, must soon meet with a competition by water more intense than any that they have heretofore suffered, for within three years another route, one more important, searching, and determinative in its effect upon railroad rates than any other, will be opened—a route all water by way of the Panama Canal. The cutting of this canal will in effect bring the Straits of Magellan 3,500 miles to the northward, and with modern steamships it is estimated that San Francisco will by water be removed from New York but 14 days.

EVOLUTION OF BLANKET SYSTEM.

While the ocean has been potent in affecting rates, it would be idle to say that we know or can ascertain the degree of this influence. In the very first place we do not know what rates the shippers paid. The published rates until within very recent years give no indication of what the actual rate paid was. And, furthermore, rates to the Pacific coast have been the subject of commercial forces and railroad policies to an extent which is probably without parallel in our railroad history. It may not be valueless, however, to review the rise and fall of class rates since the year 1887, when tariffs were first required to be filed, and to take a glance at the influence on commodity rates of the rate competition of the immediate past. As has already been noted, the first tariff filed with the Commission was one which is said to have approximated the actual rates which had been collected, and this was the result of a coming together of the carriers after a troublesome rate war. The scale as to first class traffic ran: To San Francisco from New York,

\$3; from Pittsburg, \$2.70; Detroit, \$2.55; Chicago, \$2.40; Mississippi River, \$2.30; Missouri River, \$2.10. This tariff was soon followed by another—that of January 16, 1888—which began with a rate of \$4 from New York, the rate from Chicago being \$3.25. On September 1, 1888, however, owing doubtless to this feud between the eastern and the western carriers which has been herein referred to, we find the \$4 scale in effect; from Buffalo and Pittsburg, as from Toledo and Detroit, the rate, however, was \$3.95; Chicago, \$3.90; Mississippi River, \$3.70; Missouri River, \$3.50. Four months later, January 1, 1889, a rate of \$4.20 from New York was put in, the difference between the New York and the Chicago rate being 30 cents. This set of class rates seems to have continued until April 11, 1893, when another rate war, as we have noted, was begun, these rates being on the scale of \$3.70 from New York, \$3.40 from Chicago, \$3 from the Missouri River. But hardly were these rates in effect when all rates east of Chicago were canceled as of May 11, 1893, and for four years there appear to have been no joint through rates in effect from any point east of Chicago. On July 16, 1894, the rate from Chicago to the Pacific terminals was reduced from \$3.40 to \$2.40, which was the blanket rate from Chicago, Mississippi River, and Missouri River territories. Three years later came an adjustment with the eastern carriers, by which they put in from New York, Pittsburg, and Detroit a \$2.40 scale, and thus for the year June, 1897, to June, 1898, the \$2.40 scale from all points east of the Missouri River obtained. This was the first blanket from the Missouri River to the Atlantic seaboard. Hitherto the rates had been graded up to New York, the more distant point carrying the higher rate as to class traffic. However, on June 25, 1898, a \$3 scale covering the same territory went into effect. Not yet, however, was the blanket perfect, for neither in the scale of 1897 nor in that of 1898 were the same rates carried from points west of Chicago that were carried from Chicago and points east thereof. This was remedied, however, on January 18, 1904, six years later, when the rates on the lower classes from the Missouri River and the Mississippi River were raised to equal those of Chicago. For five years this condition continued, until on January 1, 1909, a further increase in the lower classes was made, but this time as to New York and Boston territories, the increase being effected by eliminating the blanket rates as to all classes below fifth.

RATE CHANGES IN TWENTY YEARS.

If we make a further study of these tables which will be found appended hereto (see Appendix A) as to the rates from Chicago, Mississippi River, and Missouri River points, we will observe some facts that are not uninteresting. The rate to-day from the Missouri River to the Pacific coast is 90 cents high, first class, 85 cents second

class, 80 cents third class, than it was nearly 25 years ago. The lowest class which we now have is class E, which from the Missouri River at present is 95 cents; the lowest class in 1887 carried a rate of 68 cents. From the Mississippi River the lowest class is to-day 20 cents higher than in 1887; the highest class is 70 cents higher than in 1887 from the Mississippi River. It is perhaps not altogether fair to compare the lowest classes because there were more classes formerly than at present. The rates from Chicago, Mississippi River, and Missouri River, for the four years 1894-1898 were 60 cents less, first class, than the present scale.

There have been two periods of intense water competition since the year 1887, when the act to regulate commerce went into effect. One following the establishment of the Merchants' line via the Panama route, the other immediately following the establishment of the Tehuantepec route in 1906. The effect on commodity rates out of New York of the establishment of the Merchants' line of steamships has already been adverted to in the testimony given by Mr. Luce of the Southern Pacific. In order to ascertain the effect upon commodity rates of the establishment of the American-Hawaiian line we have secured from the carriers a statement of the fluctuations in their rates since the year 1906, from which it appears that notwithstanding the presence of what purports to be active water competition, commodity rates by the rail carriers have been increased rather than lowered during that period. Out of 1,535 commodity rates compared by the carriers it appears that no change has taken place since December 1, 1906, as to 696 of such commodities, reductions have been effected in 287, advances and reductions as to 132, and advances as to 418. Of the items increased, the rates on 318 commodities were increased from the whole eastern blanket. The reductions in the greater part were effected by taking single articles from the classification and giving to them commodity rates from all points of origin.

RAILROAD POLICY.

We have noticed how through the years this blanket of class and commodity rates has been drawn westward from the sea-competitive point until it extends two-thirds of the distance across the continent. How have the carriers justified this blanket to the coast but not to intermediate points? Long before the blanket had been stretched to its present western extent the communities intermediate between its eastern border and the Pacific made protest against the injustice that was being done. For nearly a quarter of a century this complaint has been heard and has ceased at times only to be revived with greater earnestness. A line of railroad policy which leads to such result may be presumed to have in it something artificial and unnat-

ural. That which appeals to us as unnatural in this situation is that rates which are said to be less than reasonable because compelled by ocean competition are made from points where we can find no such competition. It does Reno no injustice for the transcontinental lines to give San Francisco a rate from New York that will enable them to carry traffic as against the ocean carriers out of New York. By such policy Reno secures the advantage of her proximity to San Francisco, an ocean terminus. If the ships out of New York find it profitable to pay the railroad rate from Pittsburg to New York in order to take the freight from the transcontinental lines, a rail rate which will meet this competition at Pittsburg is permissible. It is fairly established that the influence of water competition does not cease at the Pittsburg-Buffalo line, but extends westward as to certain particular commodities, and doubtless for some distance west of Pittsburg the carriers may properly make rates which will prevent the movement eastward to the seaboard instead of westward over their lines, but we look in vain throughout the records of this Commission for 20 years to find any but the most fragmentary evidence that sea competition extends to Chicago. On the contrary, it is the admission of the carriers themselves that the rates which they make from Chicago to the Pacific coast terminals are established in order that the manufacturers and the jobbers of the west may compete on a level with the jobbers and manufacturers who have the advantage of a location at the Atlantic seaboard.

The most interesting discussion of this question to which our attention has been directed is that which occurred some ten years ago in the course of what is known as the *St. Louis case—Business Men's League of St. Louis v. A., T. & S. F. Ry. Co.*, 9 I. C. C. Rep., 318—between William F. Herrin, chief counsel of the Southern Pacific Company, and Paul Morton, then vice president in charge of traffic of the Santa Fe Railway, a portion of which directly touching upon questions of immediate interest is here inserted:

Mr. HERRIN. Should a railroad company in your opinion voluntarily take business where there is no competitive force operating; should it take business at less than a compensatory rate, full compensatory rate? Would you voluntarily put in these rates if there was no water competition between San Francisco and New York?

Mr. MORTON. I do not think we would.

Mr. HERRIN. You would not voluntarily make these low rates?

Mr. MORTON. Water competition is the controlling force.

Mr. HERRIN. That forces you to either take the business at those rates or not take it at all?

Mr. MORTON. Yes, sir.

Mr. HERRIN. Well, as a matter of policy should a carrier take any business at less than a compensatory rate where it is not compelled to do it, where there is no competitive force?

Mr. MORTON. In many cases we do it to encourage an industry or to in some way provide for future benefits.

Mr. HERRIN. But as a general rule? That would be the exception to the general rule?

Mr. MORTON. It is all done for selfish motives.

Mr. HERRIN. For what?

Mr. MORTON. For selfish motives—either from some benefit to be obtained at once or in the future.

Mr. HERRIN. You could not put your rates, could you, on the basis of the rate from New York to San Francisco—reduce all your intermediates to that basis or less?

Mr. MORTON. I think it would be a very great hardship if we had to do that.

Mr. HERRIN. As a financial proposition, you are compelled to maintain the present intermediate rate, or something near that?

Mr. MORTON. We think so.

Mr. HERRIN. Is there any case of graded rates where the rate from Chicago to San Francisco is no more than your proportion of the through rate from New York?

Mr. MORTON. I do not think so.

Mr. HERRIN. There has been no case where you have made the graded rate as low as your proportion of the through rate?

Mr. MORTON. I do not think so.

Mr. HERRIN. What is about the proportion that the roads west of Chicago take of the through rate?

Mr. MORTON. From New York?

Mr. HERRIN. Yes, sir.

Mr. MORTON. About 75 per cent.

Mr. HERRIN. As I understood you yesterday, you justified the graded rate from a selfish standpoint.

Mr. MORTON. Well, yes—not only a selfish standpoint, but other standpoints.

Mr. HERRIN. That is, for building up the Santa Fe?

Mr. MORTON. Giving the people the benefit of advantages which they should naturally enjoy.

Mr. HERRIN. Give which people?

Mr. MORTON. The interior.

Mr. HERRIN. That is, middle west points?

Mr. MORTON. Yes, sir.

Mr. HERRIN. If you give them the same rate that New York gets, you do pretty well by them, don't you?

Mr. MORTON. I do not think we are doing particularly well for them.

Mr. HERRIN. Why?

Mr. MORTON. Because I think, owing to their geographical location, they are entitled to a better rate than New York.

Mr. HERRIN. New York gets a better than compensatory rate on account of water competition. The middle west has not got that water competition.

Mr. MORTON. But the water competition is a controlling influence.

Mr. HERRIN. But it does not control the middle west rate.

Mr. MORTON. They have to compete with the water competition in the marketing of their goods on the Pacific coast.

Mr. HERRIN. But the middle west has not got the water competition itself?

Mr. MORTON. They have it to a degree. That establishes the price at which they can market their goods on the Pacific coast. I do not know how much greater they could have it. I think they have got it.

Mr. HERRIN. They get it through market competition?

Mr. MORTON. Market competition; yes, sir.

Mr. HERRIN. When you have given the middle west the New York rate, which itself is compelled and not fully compensatory, why ought you to give them any less,

considering now the middle west, not the railroad? What right have they to any better rate than New York?

Mr. MORTON. Well, if we hauled their goods as cheap as we hauled goods for the New York man, we would give New York a much better rate.

Mr. HERRIN. Your rate from Chicago to San Bernardino is higher than your rate from Chicago to Los Angeles?

Mr. MORTON. But there is no discrimination as between the Chicago and the Los Angeles merchant.

Mr. HERRIN. I am asking you if the rate to Los Angeles is not higher than to San Bernardino?

Mr. MORTON. Yes, sir.

Mr. HERRIN. Why do you charge the San Bernardino man more than the Los Angeles man?

Mr. MORTON. San Bernardino is given the benefit of the competition Los Angeles has and is charged the local back from Los Angeles. The Chicago man is not discriminated against. We treat the Chicago man as well as we treat the Los Angeles man. Where is there any discrimination?

Mr. HERRIN. Why don't you treat the San Bernardino man as well as you treat the Los Angeles man?

Mr. MORTON. There are several reasons. The Los Angeles man is a little nearer the sea, and the question of market competition does not come in.

Mr. HERRIN. That is, you do not treat him as well because you are not obliged to?

Mr. MORTON. That is probably the chief reason—or because we can not afford to, I will say. There is not any first-class reason except the one that we can not afford to.

Mr. HERRIN. You justify giving the Chicago points the same rate as the Atlantic coast, largely on the theory of building up Chicago and building up the middle west?

Mr. MORTON. Yes, in the sense of equity.

Mr. HERRIN. Well, why should you not build up your Pacific coast intermediates in the same way?

Mr. MORTON. I am not sure that we won't have to do that some day.

Mr. HERRIN. Is there no reason why you should discriminate in favor of a town nearer Chicago, like San Bernardino?

Mr. MORTON. There is a difference of market competition.

Mr. HERRIN. That is the only reason?

Mr. MORTON. That is a reason.

Mr. HERRIN. Market competition operates at the eastern points and not at the western?

Mr. MORTON. Yes, sir; it operates everywhere. If San Bernardino came in competition, if it were selling goods on the Pacific coast in competition with San Francisco, or had a manufactory there and was making something, iron or steel, they would probably be put on a basis where they would get fair treatment. I certainly would be in favor of it.

Mr. HERRIN. The mere fact that Chicago is a large place does not entitle it to a better rate than any other place similarly situated, does it?

Mr. MORTON. I think not.

Mr. HERRIN. No argument could be made justifying the lower rate because of being a larger place?

Mr. MORTON. No, sir; I think there is no difference except so far as Chicago is selling goods in competition with the world. Market competition comes in there.

Mr. HERRIN. San Bernardino sells goods, does it not?

Mr. MORTON. Hardly in competition with the world.

Mr. HERRIN. It distributes goods?

Mr. MORTON. On any goods it produces there they are fairly treated.

Mr. HERRIN. Does Chicago produce everything itself?

Mr. MORTON. No, sir; but outside of the manufactured goods—

Mr. HERRIN. It is shown in the case that many of the goods in controversy are brought from points east of Pittsburg.

Mr. MORTON. Yes, sir.

Mr. HERRIN. So far as San Bernardino is dealing in goods brought from other points there and has merchants selling and distributing there, it is situated like Chicago, isn't it?

Mr. MORTON. No, sir.

Mr. HERRIN. It is a smaller place, but it is like Chicago in the respect I mentioned?

Mr. MORTON. No, sir; hardly.

Mr. HERRIN. Goods are sold there?

Mr. MORTON. Not for distribution to other points; retail to the consumer only, I think.

Mr. HERRIN. To some extent they are sold there for distribution?

Mr. MORTON. Not for distribution to other places; I think it is very limited. No one would compare San Bernardino with Chicago or St. Louis.

Mr. HERRIN. Rate conditions are different?

Mr. MORTON. Yes, sir.

Mr. HERRIN. Now if the rate conditions at San Bernardino were the same as at Chicago, would not that increase the distribution of goods there?

Mr. MORTON. I don't know.

Mr. HERRIN. Suppose you gave the San Bernardino merchant the Los Angeles rate to San Bernardino; would that not give him an advantage over what he has now in distributing and selling?

Mr. MORTON. I think it would.

Mr. HERRIN. Suppose you gave him a lower rate, a graded rate, lower than you gave Los Angeles, on account of it being a lesser distance, just as you propose to give Chicago; would that not increase his area of distribution?

Mr. MORTON. It might. I think we would do it if San Bernardino were the same size as Chicago.

Mr. HERRIN. You said a while ago that size ought not to fix the rate.

Mr. MORTON. It oughtn't, but it does.

Mr. HERRIN. Now, then, don't you think that when you give to Chicago the same rate that you give to New York and you deny to San Bernardino the same rate that you give to Los Angeles, don't you think there is a ground for saying you have discriminated?

Mr. MORTON. I think it is a discrimination, but it is not an unjust discrimination; nobody is damaged. The Chicago merchant or manufacturer is competing with New York; he is trying to sell goods on the coast in competition.

Mr. HERRIN. How about the San Bernardino man?

Mr. MORTON. The San Bernardino man can not be compared with the Chicago man or the New York man, in my opinion.

Mr. HERRIN. Why not? He is buying goods, just as is the Chicago man from other points, and wants to sell them or distribute them. He is in that business, and how can we put him on a different principle except upon the question of volume of business?

Mr. MORTON. Market competition.

Mr. HERRIN. Market competition operates there as to his business just the same?

Mr. MORTON. If he was buying goods to job on the Pacific coast afterwards or manufacturing goods.

Mr. HERRIN. He would ship them anywhere he could sell them, wouldn't he?

Mr. MORTON. Yes, sir.

Mr. HERRIN. And if he had the rates, he could do it?

Mr. MORTON. I admit that. I don't deny there is a discrimination against San Bernardino, but I question whether it is an unjust discrimination.

Mr. HERRIN. Now suppose we take Fresno. They have some jobbing houses there?

Mr. MORTON. I believe so, a small one; they are after us for terminal rates right along.

Mr. HERRIN. Have you given them terminal rates?

Mr. MORTON. Not yet; we may some day. It is a question altogether of policy.

Commissioner PROUTY. If you give Fresno the terminal rates, can you defend a higher rate at points between Fresno and San Francisco?

Mr. MORTON. I do not think so.

Mr. HERRIN. Do you think you ought to give Fresno the terminal rates?

Mr. MORTON. I don't think so; no. I would dislike very much indeed to do it, because it would affect our earnings very materially. I do not think we can afford to do it, but we may have to do it some day.

* * * * *

Mr. CHRISTIE. Where there is movement of freight from markets, is there not a difference between market competition which you have alluded to several times—a difference between market competition from markets and competition to various points of destinations?

Mr. MORTON. I think there is.

Mr. CHRISTIE. Is not that one of the reasons why you might have the rate graded from points in the east and might not grade them to points in the west?

Mr. MORTON. That was my statement; at least that was what I tried to testify to.

Mr. CHRISTIE. And if it be true that the rate and the route upon which transcontinental traffic is based is the ocean rate and route, would not that be a reason why the rates to the terminal points, all rail, in competition with this ocean rate should be less to San Francisco than to the interior point?

Mr. MORTON. I think so.

Mr. CHRISTIE. Do you not have to refer at all times to your basing rate?

Mr. MORTON. We do almost always.

Mr. CHRISTIE. And if it be true that the ocean rate is the basing rate, then would not at all times the rate to the interior point, so far as that competition reaches and so far as that rate does operate as the basis—would not the rate to the interior point be more than the rate to the coast point?

Mr. MORTON. Generally speaking.

Mr. CHRISTIE. Now, Mr. Herrin has suggested that the Atlantic coast manufacturer or jobber will not quietly see business moved from the Atlantic seaboard to the middle west, and yet he has stated to you as a basis upon which to put a question that the business has moved from the Atlantic seaboard to the middle west in the past, and Mr. Stubbs reiterated the same thing, that a very large percentage of the business that used to move from the Atlantic seaboard is now moved from the middle west. Is there any reason why the Atlantic seaboard merchant could not have prevented that in the past just as well as he can prevent further movement in that direction in the future?

Mr. MORTON. None that I know of.

Mr. CHRISTIE. Has he not always been just as able to use the ocean as he is to-day?

Mr. MORTON. I think so.

Mr. CHRISTIE. I believe you stated that after the Southern Pacific acquired the Morgan line, and not before that time, the Southern Pacific opposed graded rates?

Mr. MORTON. Yes, sir; after they acquired the Morgan Steamship line—

Mr. CHRISTIE. I am trying to make this distinction. The graded rate existed from 1883 to 1893, and then I think from 1893 to 1896 the rate was based on Chicago so that there was a higher rate from eastern points than from Chicago; so that the graded rate was not abrogated at the time the Southern Pacific bought the Morgan

line. But did not the Southern Pacific oppose the graded rate from the time it became a carrier from ocean to ocean?

Mr. MORROW. Well, I was out of the transportation business from 1886 to 1896, and I do not know what the position of the Southern Pacific was. I know in a general way that they declined to make—I know in a specific way that they declined to make the interior rates as low in some cases as the New York rate was.

Mr. BRUNN. That was since 1896?

Mr. MORROW. No; that was prior to 1896.

Mr. BRUNN. Prior to 1886?

Mr. MORROW. About 1886—1894 or 1896.

Mr. BRUNN. Since 1893?

Mr. MORROW. Well, since 1893, I guess; 1894 or 1895. I refer to the Colorado Fuel & Iron rates I went after and did not get.

Mr. CANNON. Has not the multiplication of transcontinental rail lines tended more and more to make the rail lines the primary lines for shipment to the Pacific coast as against the ocean lines?

Mr. MORROW. I think that the movement of transcontinental freight is greater than it ever was as compared with the movement by ocean, say the last year. I think it is greater than it ever was compared with the movement by ocean.

Mr. CANNON. I want to know whether as a principle, given the ocean originally as the only means of communication between the Atlantic and Pacific, and that was once the case, the establishment of a transcontinental rail line would make that ocean route of less importance than before?

Mr. MORROW. I think so.

Mr. CANNON. And would not the multiplication of rail lines, as you add one and then another and then another and then another, would not that have a tendency to make the rail lines the primary connections between the east and the west rather than the roundabout ocean route?

Mr. MORROW. I think that is a natural result.

Mr. CANNON. I do not know how much you know about modern business methods—I do not claim to know very much myself—but in a general way is it not true that the necessities of business to-day are such that jobbers on the Pacific coast would naturally more and more prefer the quick and regular service of rail lines to the irregular and uncertain and long service of the ocean steamship?

Mr. MORROW. I think they would on anything like an equality of rates.

Mr. CANNON. Would you not say that is one of the reasons for the growing business of the rail lines in the transcontinental trade?

Mr. MORROW. That and the general prosperity everywhere in the United States.

Mr. CANNON. You are aware of the fact that the Pacific coast merchants opened up to the railroad companies a new view of competition by water by saying to them frankly at the Del Monte meeting, "You gentlemen have been mistaken all the time in supposing that water competition is such a factor. The fact is that most of our goods do not come by water and would not if we had anything like a fair rate."

Mr. MORROW. I was not at the Del Monte meeting.

Mr. CANNON. You have spoken of your interest being selfish in this matter in particular. Suppose you controlled a through rail line from New York to San Francisco. Would you not consider it a good economic management of that rail line to encourage all from the interior to the distant Pacific coast points, using the eastern end of your line for the shorter haul from the Atlantic to the interior points—I mean as against this ocean competition, whatever it amounts to.

Mr. MORROW. I so testified this morning. If we had a through line from the Atlantic to the Pacific coast, we would be just as much in fear of having the business flow from the interior as now.

Mr. CANNON. Your point of view is not a selfish one from the standpoint of a man controlling a line from Chicago.

Mr. MURPHY. I think I called it "enlightened selfishness."

Mr. CANNON. I thought perhaps the gentlemen on the other side did not know of that type of selfishness. Mr. Stettin has given a reason for the possibility of the grade in the past, the fact that the ocean competition was either controlled or controlled. I would like to ask whether there is any reason why the transcontinental lines are not as powerful to-day, and more powerful to-day than ever, in control as controlling any competition here—ocean competition or anything else.

Mr. MURPHY. We are not allowed by law to do anything of the kind now.

Mr. CANNON. You mean you would not be allowed by law to run steamships?

Mr. MURPHY. If we had the money we could own them, but we could not deal with them.

Mr. CANNON. Let me ask you if you mean that the law is the only thing to prevent the control or the neutralization of the ocean to-day for the purpose of controlling rail, if there is anything else besides law?

Mr. MURPHY. Yes, sir; there are some other reasons. There is an independent steamship line that thinks there is money in the business and they are out for all they can make.

Mr. CANNON. Can you tell me any reason why if that neutralized the business and processes of the transcontinental roads that the transcontinental lines could not run that steamship line?

Mr. MURPHY. They could if they had money enough and did not think there would be another built immediately.

In the same case, Mr. Stettin, testifying, said:

It is the question as to whether the rate on a transitive route, and, I believe that point, then the question is according to our judgment, and we think the ruling of the Interstate Commerce Commission originally and the law, or the proper construction of it, just in the degree that they can avoid themselves of the same competitive conditions that New York can, just in that degree and in further they are entitled to the New York rate. That is the law as it has been expounded to me by our own counsel, and we have had three general counsel since the law has been enacted. . . . If Chicago, being an interior point, is entitled to a lower rate to San Francisco or the same than from New York, why is not Boston, New, that is near San Francisco and much nearer the coast—can much more easily avoid itself of ocean competition—why is not it entitled to a lower rate than San Francisco on the grade it receives from New York? It is entitled to it as we read the law. If there is entitled to a lower rate than New York or the same rate, then that is true of every point east of San Francisco in the state of California between here and New York, and the result is that the entire route, local and through, is brought down to the level of the competitive rate between New York and San Francisco compelled by the act itself. . . . It is said that you can make one rule apply on shipments from a point to a point where ocean competition exists regardless of the fact whether the conditions at the initial point are governed by ocean competition or not, but that does not necessarily apply to the transcontinental points. That is to say, you can make the rate from Chicago to San Francisco lower than the rate from New York to San Francisco, but in the application of that rule it is not necessary for you to make a rate from New York to Reno, New York being on the water, the only difference being that it is the initial point instead of the transcontinental point in the case of San Francisco; but you do not have to make a lower rate from New York to Reno, and for that reason my friends of the Union Pacific and others think that they can make a lower rate from Chicago to San Francisco and yet charge a higher rate, as they do, from Chicago to Salt Lake City, charge a higher rate from Chicago to Denver, as they do, on many articles. That is one interpretation of the law.

Inasmuch as Mr. Morton gives as his only reason for not extending terminal rates to intermediate points the decrease in the revenues of his carrier that would result, it may be well to take a glance at the comparative earnings per mile of road made by the Union Pacific, Southern Pacific, and Santa Fe lines in the year when this testimony was given (1901) and the last fiscal year for which reports were made (1900).

Statement of gross and net earnings for years ending June 30, 1900 and 1901, as reported to the Interstate Commerce Commission by the roads named.

Railroads.	Operating revenue.		Net operating revenue.	
	1900	1901	1900	1901
Union Pacific R. R.	\$80,036,379	\$85,075,880	\$25,564,389	\$31,040,177
U. P. Northern, Southern & Santa Fe Rys.	39,071,210	35,540,880	15,035,448	18,427,074
Southern Pacific Co.	746,389,465	85,276,388	74,891,473	85,125,499
Santa Fe R. Co.	130,033,490	177,244,888	51,039,471	79,148,471
Southern Pacific Ry. Co.	35,448,380	38,536,380	15,136,637	7,550,083

1 Includes operations of Central Pacific Railway.

2 Includes \$1,248,273 revenue from operation of ferry divisions.

3 Includes \$1,248,273 net operating revenue from operation of ferry divisions.

4 Includes \$1,248,273 net operating revenue from operation of ferry divisions.

5 Data obtained from reports of Southern Pacific Company and subsidiary companies: Central Pacific Railway; California, Sacramento & San Joaquin River; Southern, Santa Fe & West Texas Railway; Houston & Shoreport

Railroad; Houston & Texas Central Railroad; Santa Fe Variation Railroad; Louisiana Western Rail-

road; Missouri & Texas Central Railroad; Texas Railroad & Steaming Company; Nevada & California Railway;

Great Valley Railroad; Southern Pacific Coast Railway; Southern Pacific Railroad; Southern

California & California Railroad; Santa Fe Coast Railway; Southern Pacific Railroad; Southern

Pacific Railroad; Texas & New Orleans Railroad; New Mexico & Arizona Railroad; and Santa Fe Railway.

6 Data from Southern Pacific Company and subsidiary companies: Austin & Northwestern Railroad; Fort

Worth & Colorado Railroad; Central Pacific Railway; United Texas & Northwestern Railroad; Houston

Worth & New Orleans Railroad; Sacramento, Marysville & San Antonio Railroad; California, Houston

& Northern Railroad; Gulf, Western Texas & Pacific Railroad; Houston East & West Texas Railway;

Houston & Shoreport Railroad; Houston & Texas Central Railroad; Santa Fe Variation Railroad;

California, Sacramento & San Joaquin River; Southern, Santa Fe & West Texas Railway; Houston

& Northern Railroad; Texas & New Orleans Railroad; New Mexico & Arizona Railroad; and Santa Fe Railway.

Statement showing certain traffic statistics for the years ending June 30, 1910 and 1909, as reported to the Interstate Commerce Commission by the roads named.

Railroads	Average mileage of main line during year		Operating revenue per mile of road		Net operating revenue per mile of road		Number of tons and 100 lbs. moved per mile of road		Number of passengers moved per mile of road	
	1910	1909	1910	1909	1910	1909	1910	1909	1910	1909
Union Pacific R.	8,373.98	8,055.98	815.89	88.49	97.89	28.89	1,487,877	1,487,877	197,382	197,382
The Atlantic, Virginia & Santa Fe Ry.	7,486.08	6,815.08	11,864	7,361	4,139	5,294	787,877	787,877	141,382	141,382
Southern Pacific Co.	6,085.08	6,815.08	11,864	7,361	4,139	5,294	787,877	787,877	141,382	141,382
Southern Railway Co.	6,085.08	6,815.08	11,864	7,361	4,139	5,294	787,877	787,877	141,382	141,382
Central Pacific Ry.	6,085.08	6,815.08	11,864	7,361	4,139	5,294	787,877	787,877	141,382	141,382
The Chicago, North Island & Pacific Ry.	6,085.08	6,815.08	11,864	7,361	4,139	5,294	787,877	787,877	141,382	141,382
Chicago, Burlington & Quincy R. R.	6,085.08	6,815.08	11,864	7,361	4,139	5,294	787,877	787,877	141,382	141,382
Chicago & North Western Ry.	6,085.08	6,815.08	11,864	7,361	4,139	5,294	787,877	787,877	141,382	141,382
Chicago, Milwaukee & St. Paul Ry.	6,085.08	6,815.08	11,864	7,361	4,139	5,294	787,877	787,877	141,382	141,382
Norfolk & Western Ry.	6,085.08	6,815.08	11,864	7,361	4,139	5,294	787,877	787,877	141,382	141,382
The Great Northern Ry.	6,085.08	6,815.08	11,864	7,361	4,139	5,294	787,877	787,877	141,382	141,382

* Based on 1,000.00 average mileage operated in passenger service.
 * Includes operations of the Central Pacific Railway.
 * Data obtained from report of Southern Pacific Company to its stockholders.
 * Covers Southern Pacific Company and proprietary interests: Central Pacific Railway; Ogden, Harbinger & San Antonio Railway; Houston, East & West Texas Railway; Houston & Shoreport Railroad; Houston & Texas Central Railroad; Texas & Vermilion Railroad; Louisiana Western Railroad; Morgan's Louisiana & Texas Railroad; New Orleans Railroad; Nevada & California Railway; Oregon & California Railroad; South Pacific Coast Railway; Southern Pacific Railroad; Southern Pacific Company; Texas & New Orleans Railroad; New Mexico & Arizona Railroad; and Denver Railway.
 * Data covers Southern Pacific Company and proprietary companies: Atlantic & North-western Railroad; Cactus & Colorado Railway; Central Pacific Railway; Ogden, Harbinger & San Antonio Railway; Fort Worth & New Orleans Railway; Ogden, Harbinger & San Antonio Railway; Houston, East & West Texas Railway; Houston & Shoreport Railroad; Houston & Texas Central Railroad; Texas & Vermilion Railroad; Louisiana Western Railroad; Morgan's Louisiana & Texas Railroad; New Orleans Railroad; Nevada & California Railway; Oregon & California Railroad; South Pacific Coast Railway; Southern Pacific Railroad; Southern Pacific Company; Texas & New Orleans Railroad; New Mexico & Arizona Railroad; and Denver Railway.
 * Covers main line, not road and branch.
 * Revenue in mileage operated on June 30.
 * Data not shown in report.
 * Includes mileage of "Independent System."
 * See Appendix I for details.

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INDUSTRIAL MOVEMENT WESTWARD.

Whatever the reason, the fact stands forth throughout this record that the source of supply upon which the far western communities largely draw their manufactures has within half a century moved westward from the Atlantic seaboard, so that, as was found by the railroad commission of Nevada from an analysis of the billing of actual shipments into Reno, 75 per cent of their traffic coming from the east originated no farther east than the longitude of Chicago. There are cotton mills as far west as Kansas City; mining, milling, and farming machinery is produced more largely in and about Chicago than in any other section of the country; boots and shoes, hats and clothes, cooking utensils, and the multitudinous articles of domestic use may be secured in large part without coming east of the Alleghenies; in fact, the center of those industries which supply the far west apparently is not far removed from the center of population of the country. This is a pregnant fact. It was announced by the Santa Fe officials, when they opened their through line from Chicago to Los Angeles, that they thought it the part of wisdom to make their rates lower or as low from Chicago than from New York, so that the industries of the middle west might develop. They would make their line independent of their eastern connections in so far as that was possible, and instead of bidding against the shippers of the seaboard for traffic destined to the Pacific coast they would develop industries close to their own eastern terminus which would supply the western demand, and thereby develop a traffic for the lines west of Chicago which need not be divided with the carriers east of that city—an exclusive traffic, one which could be carried at rates more compensatory than any that could be had out of the division of a through coast-to-coast rate.

This policy was determined upon by the carriers running west from Chicago 25 years ago. From the date of the first transcontinental tariff that we have upon the files of the Commission Chicago has never paid a higher rate to reach a Pacific coast terminal than has New York, either upon classes or commodities. The water competition of the seaboard has never been strong enough since 1887 to compel a reduction of rates from New York which the lines out of Chicago did not feel fully justified in meeting at that point. And, be it noted, at the time that this policy was begun there was no water competition between the coasts save by an occasional tramp boat and such other ships as the railroads themselves positively and admittedly controlled. It would not be claimed that this policy was the sole cause of the steady march of industry to the westward during the past quarter of a century. Nevertheless we find the fact that there is now hardly a need which

the people of the far west have that can not be supplied from territory nearly 1,000 miles nearer to them than was their source of supply 25 or 30 years ago. Rates that were introduced then purely for market competitive reasons may be to-day reasonable in themselves. So, too, rates then established from Chicago to meet conditions at San Francisco, a competitive terminal, and justifiably made lower to that more distant point than to intermediate points, may in the course of years have become, by reason of increased volume of traffic, growth of population, and new methods of operation so reasonable as to make the imposition of higher rates at intermediate points unjustifiable. We see strong suggestion of this in Mr. Morton's testimony given 10 years ago when none of these carriers was carrying nearly so large a traffic or operating so economically as they are to-day, when the intermediate territory had not yet been exploited as it is now, when dry farming was unknown, and the irrigation of the desert through the aid of the government no more than a statesman's dream.

AN ARTIFICIAL ADJUSTMENT.

It is not provable, but there is much reason to support the statement that if all the producing territory—the fruit and vegetable growing, mining, and lumbering territory—which does not receive the benefit of terminal rates, and which is compelled to pay the rate to the coast plus the rate back upon its commodities of eastern production, were taken from the transcontinental carriers they would be on the verge of bankruptcy in but a short time. Surely a railroad policy adapted to the conditions of one day may properly change with the conditions of another, and in the very nature of things it must be apparent that the transcontinental carriers can not continue forever charging higher rates to the intermountain country than to the coast from the middle west. The condition is too artificial to last. The carriers have taken from San Francisco in large part the advantage that she should enjoy from her situation upon the ocean by throwing around her a circle of terminal points 100 miles or so inland. By doing this they have forced water carriers to meet rail competition at these interior places, and yet the railroads urge that the rates are made to meet ocean-to-ocean competition. In the east they have stretched the blanket from Portland, Me., to Denver, Colo., a distance farther than from Antwerp to Moscow, but they refuse to admit that from any point along this long line it would be justifiable to make the rates given to the coast terminals applicable to Reno.

Furthermore, we find that this situation is artificial in that it has been brought about by a procession of agreements between carriers. Each carrier has been appeased by giving to it something which would cause it to be satisfied with the arrangement. The carriers

have competed with each other across a table until their minds agreed upon a condition that would prevent rate wars. It is wholesome and beneficial that the body politic should not be disturbed by rapid fluctuations in rates of transportation which tend to destroy the stability of commerce and imperil the fortunes invested in such transportation facilities. If society does not undertake to regulate the methods by which a natural monopoly such as a railroad may be profitably conducted it is not to be expected that such a monopoly will not seek to protect itself, even at the disadvantage of the public it serves. The results of such self-protective measures, however, must be such as neither to offend the law nor be opposed to the development of the country and the instinct of its people for fair play.

If now we have apprehended aright the intent of Congress there comes before us upon an application for permission to deviate from the prohibitive clause of the fourth section the inclusive question whether by such deviation any provision of the act will be violated, and the burden rests upon the carrier to satisfy our minds that no such result would be effected by the granting of such permission—that no injustice will be done to the intermediate point with relation to the more distant point. As already said, the purpose of the statute which we are required to enforce is, succinctly stated, to preserve harmony between communities, individuals, and carriers, to allay discord, and prevent, so far as may be, oppression and injustice. The unhampered exercise of a railroad policy may make for the material benefit of the carrier—at least for its immediate profit—but work a wrong with which the public must concern itself. To be concrete, it may be (although this fact has not been established) that it is to the financial interest of the transcontinental carriers to make the same rates from the Missouri River as from Chicago, Pittsburg, and New York to the coast cities which lie on or near the ocean's edge, and compel the intermediate points to base their rates upon these coast terminals; but this decision on their part is certainly subject to review, and when Congress says that this Commission "may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section," it means to lodge with this body, if it means anything at all, the power to pass in judgment upon the effect of a railroad policy which departs from the intentment of the law. A community is entitled to something more than a reasonable rate; it is entitled to a nondiscriminatory rate. A carrier may not say, "We will give to this community a reasonable rate" and meet the full requirement of the law; it must view its rates as a whole and see to it that they effect no advantage or preference to one community over another which does not arise necessarily out of the transportation advantages which the one has over the other.

MARKET COMPETITION.

Ocean competition, say the carriers, brings about the lower rates from coast to coast; market competition produces the lower rates from the interior to the coast. We have considered ocean competition and see how real was its effect and how the carriers dealt with it. "Market competition" is a phrase with which the railroad traffic manager too often conjures. When no other force can be found which brings about a discrimination, market competition is advanced. It is both a sword and a shield; it is used to protect the carrier against attack because of undue discrimination as between communities, and it is a weapon of offense as well, by which one carrier invades the territory of another upon a different basis from that which it grants to its own immediately dependent communities and forces concessions from its rival carriers.

Market competition, as we have seen, is a euphemism for railroad policy. The history of the fourth section makes clear that it was born out of a desire, and has been amended out of the purpose, to restrict the force and effect of market competition. The examples cited before Congress by those who have advocated an absolute long-and-short-haul section have largely been such as arose out of railroad policy, not such as were developed by transportation competition. Congress, however, has not seen fit to say (and perhaps most wisely so) that this economic force shall not be allowed to have its play in the making of rates. Market competition must be considered as one of those circumstances affecting a rate situation with which we are called upon to deal. But may it not be said that while the language of the statute does not say that market competition shall not be allowed to justify the charging of the higher rate to the nearer point, the very spirit of the section makes against the free application of any such justifying principle! A national policy may veto a railroad policy just as a public need may overcome and set aside a private desire. Experience has demonstrated to the National Legislature that it is not safe to leave to the carriers the determination of the question what markets should be brought into competition with one another. The policy of Congress seems to be that a railroad may be compelled by transportation competition to make its rates lower than it otherwise would between two competitive points, and that this will justify a breach of the prohibition of the fourth section; but the desire of a number of shippers to reach a market is a force to which the carrier may not yield unless it can establish clearly that the adoption of such policy will not unfairly discriminate against one community and in favor of another and will not produce those results which the law was intended to destroy. Clearly to allow for market competition as a sole and controlling

factor under the fourth section is to render it nugatory, for this would be tantamount to saying that a railroad could justify every discrimination as between communities by the assertion of nothing more than its own determination of policy.

We must regard the proviso in the fourth section as subordinate to the preceding clause prohibiting the higher rate for the shorter haul, and to carry out this intent of the law a carrier must establish before this Commission, in order to secure an order of exception thereunder, more than merely its own desire to haul a great volume of traffic between two distant points; it must prove that by such a policy it will not impose unreasonable rates upon any intermediate point, and that its policy will not work an injustice of which such intermediate point may fairly complain. Unless it does make such proof this Commission is not justified under the law in excusing it from adopting its rates to the more distant point as the basis for rates to the nearer points.

In this case and under these applications the Commission has given thought to many considerations not touched upon in this report, some of which are suggested by the tables to be found in the Appendix (C—D) hereto. Such, for instance, as the reasonableness of the transcontinental rates upon commodities in and of themselves when applied from different points of origin and the relation of the cost of service over the Central Pacific when delivery is made at Reno or at San Francisco. And when we have considered the return per ton-mile yielded by many of these rates it is not remarkable that other carriers from the east have pressed forward, even to their own temporary financial embarrassment, to reach these coast terminals. No other carriers in this country enjoy such long hauls upon so great a volume of high-class traffic as do these transcontinental railroads. Their fine earnings are testimony to this effect, as well as to the competency of their management. If the principle that a railroad should charge what the traffic will bear is the criterion of railroad rates, no exception can be taken to the transcontinental situation, for it is masterfully designed to secure a maximum of revenue and yet develop such industries and benefit such communities as the railroad in its wisdom may wish to thrive, for the growth of the Pacific coast certainly is in no small part to be accredited to the discretion lodged in and exercised by the transcontinental traffic manager.

The coast cities—those that have direct access to the ocean—can not be materially injured by the policy of the law we have herein considered. They are rendered secure as entrepôts of commerce by the presence of the ocean, so long as they choose to avail themselves of its advantages. There is much reason in this record to for the belief that they have at times chosen to forego these advantages in the expectation that they would be made secure by the rail carriers of a large

distributing market in the interior. With the introduction of a policy which removes from these interior points in some degree the disadvantage under which they have suffered with relation to eastern points of production it will become a matter of moment to the coast cities to avail themselves fully of the ocean as well as develop industries upon the Pacific coast itself which will compete with the industries of the east for the interior trade. That which has been done in the middle west within a generation may certainly be accomplished upon the Pacific coast, so that there may come about a competition between real producing markets as well as competition between jobbing houses.

The carriers herein involved have not shown that undue discrimination was not effected by their rate adjustment between points in Nevada and points in California, nor have they established that the rates to the coast cities, if extended by them from eastern points outside the zone of water influence, are not fully compensatory.

We desire to be extremely conservative in this the first application of the new law, and to require an adjustment of rates that will be safely within the zone of our discretion. For this reason we have decided that the transcontinental carriers serving Reno and other points upon the main line of the Central Pacific shall make no higher charge upon any article carrying a commodity rate than is contemporaneously in effect from Missouri River points, such as Omaha and Kansas City, to coast terminal points. This principle we shall also expect to be applied on commodity rates to all main-line intermediate points in Nevada and California. Traffic originating at Chicago and in Chicago territory moving under commodity rates may have a rate seven (7) per cent higher than that imposed on freight originating in Chicago and Chicago territory and destined to the coast terminals. From Buffalo-Pittsburg territory the rates to intermediate points may rise above those demanded and charged from the same points and territory to the coast terminals to the extent of fifteen (15) per cent, while from New York and trunk line territory the rates charged shall not exceed twenty-five (25) per cent over and above terminal rates. This means that Suisun, Auburn, Truckee, Reno, and Elko, for instance, points intermediate to San Francisco from the east, shall have at least the benefit of the commodity rates extended from the Missouri River to Sacramento and San Francisco, and shall pay no more than seven (7) per cent above the Chicago-coast terminal rates, and corresponding increases of fifteen (15) and twenty-five (25) per cent, respectively, from Pittsburg and New York territories.

Some of the petitions under the fourth section which have been considered are made by carriers reaching California terminals through the southern gateways, southern Nevada and Arizona. These applications are also denied in so far as they involve the imposition of

higher rates upon intermediate points than are applied on commodities from the Missouri River to Los Angeles, San Francisco, or other coast terminals. To all such intermediate points [Ashfork, Maricopa, San Bernardino, Bakersfield, Fresno, and Ventura, for instance] terminal rates shall not be exceeded as from Missouri River points, with the same proportionate advances east of the Missouri River as heretofore specified.

An order will be made to this effect, allowing to the carriers until October 15 in which to file tariffs in accordance with said order—the same to go into effect upon three days' notice.

No order need be entered in either the Reno, No. 1665, or Phoenix cases, No. 1796, so-called, at this time.

APPENDIX A.

Class rates to San Francisco, Cal., from eastern points named.

(Rates in cents per 100 pounds.)

July 18, 1887.														
	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
New York.....	3.00	2.50	2.00	1.75	1.60	1.40	1.30	1.20	1.10	1.00	1.00	1.00	1.00	1.00
Pittsburg.....	2.70	2.35	1.80	1.55	1.35	1.25	1.17	1.08	.99	.90	.90	.90	.90	.90
Detroit.....	2.55	2.15	1.70	1.45	1.25	1.10	1.11	1.02	.94	.85	.85	.85	.85	.85
Chicago.....	2.40	2.00	1.60	1.40	1.30	1.12	1.04	.96	.88	.80	.80	.80	.80	.78
Mississippi River.....	2.30	1.92	1.54	1.34	1.15	1.08	1.00	.92	.84	.77	.77	.77	.77	.75
Missouri River.....	2.10	1.75	1.40	1.25	1.05	.98	.91	.84	.77	.70	.70	.70	.70	.68
Jan. 18, 1888.														
New York.....	4.00	3.30	2.80	2.30	1.80	1.60	1.40	1.30	1.20	1.10	1.10	1.10	1.10	1.10
Pittsburg.....	3.60	2.85	2.35	1.90	1.55	1.44	1.30	1.17	1.08	.99	.99	.99	.99	.99
Detroit.....	3.40	2.72	2.15	1.87	1.53	1.36	1.19	1.11	1.02	.94	.94	.94	.94	.94
Chicago.....	3.25	2.55	2.00	1.75	1.45	1.30	1.12	1.05	.96	.88	.88	.88	.88	.88
Mississippi River.....	3.12	2.45	1.90	1.68	1.40	1.25	1.08	1.00	.92	.85	.85	.85	.85	.85
Missouri River.....	2.90	2.30	1.75	1.55	1.25	1.15	1.00	.93	.85	.80	.80	.80	.80	.80

September 1, 1888. No class rates Atlantic seaboard territory.

	Class—									
	1	2	3	4	5	A	B	C	D	E
Sept. 1, 1888.										
Buffalo-Pittsburg ¹	Cents. 4.00	Cents. 3.50	Cents. 3.00	Cents. 2.50	Cents. 2.00	Cents. 1.95	Cents. 1.75	Cents. 1.40	Cents. 1.25	Cents. 1.15
Detroit, Toledo.....	3.85	3.45	3.05	2.65	2.25	1.90	1.65	1.40	1.25	1.15
Chicago.....	3.60	3.20	2.80	2.40	2.00	1.85	1.70	1.45	1.30	1.20
Mississippi River.....	3.40	3.00	2.60	2.20	1.80	1.65	1.50	1.25	1.10	1.00
Missouri River.....	3.20	2.80	2.40	2.00	1.60	1.45	1.30	1.05	0.90	0.80
Jan. 1, 1889.										
Rate from New York added.....	4.30	3.70	3.30	2.90	2.50	2.00	1.90	1.45	1.30	1.20

¹ And points east thereof and west of Atlantic seaboard.

January 1, 1889. Mississippi River classes A and B changed to 1.82 and 1.63 cents.

Class rates to San Francisco, Cal., from eastern points named—Continued.

[Rates in cents per 100 pounds.]

	Class—									
	1	2	3	4	5	A	B	C	D	E
<i>Apr. 11, 1893.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
New York.....	3.70	3.30	2.65	2.15	1.85	1.85	1.65	1.30	1.15	1.05
Pittsburg.....	3.50	3.10	2.50	2.00	1.80	1.80	1.60	1.25	1.10	1.00
Detroit.....	3.45	3.05	2.45	1.95	1.75	1.80	1.60	1.25	1.10	1.00
Chicago.....	3.40	3.00	2.40	1.90	1.70	1.75	1.55	1.20	1.05	.95
Mississippi River.....	3.20	2.80	2.30	1.85	1.65	1.67	1.45	1.15	1.00	.90
Missouri River.....	3.00	2.60	2.20	1.80	1.60	1.60	1.40	1.10	.95	.85

Effective May 11, 1893. Through rates did not apply from territories east of Chicago.

	Class—									
	1	2	3	4	5	A	B	C	D	E
<i>July 15, 1894.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Chicago.....	2.40	2.15	2.00	1.70	1.65	1.60	1.10	1.00	1.00	.90
Mississippi River.....	2.40	2.15	2.00	1.70	1.65	1.60	1.10	1.00	1.00	.90
Missouri River.....	2.40	2.15	2.00	1.70	1.60	1.60	1.10	1.00	.95	.85
<i>June 24, 1897.</i>										
New York.....	2.40	2.15	2.00	1.70	1.65	1.60	1.10	1.00	1.00	.95
Pittsburg.....	2.40	2.15	2.00	1.70	1.65	1.60	1.10	1.00	1.00	.95
Detroit.....	2.40	2.15	2.00	1.70	1.65	1.60	1.10	1.00	1.00	.95

Chicago, Mississippi River, and Missouri River as above.

	Class—									
	1	2	3	4	5	A	B	C	D	E
<i>June 25, 1900.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
New York.....	1.50	1.40	1.30	1.00	1.00	1.00	1.20	1.00	1.00	.90
Pittsburg.....	1.50	1.40	1.30	1.00	1.00	1.00	1.20	1.00	1.00	.90
Detroit.....	1.50	1.40	1.30	1.00	1.00	1.00	1.20	1.00	1.00	.90
Chicago.....	1.50	1.40	1.30	1.00	1.00	1.00	1.20	1.00	1.00	.90
Mississippi River.....	1.50	1.40	1.30	1.00	1.00	1.00	1.20	1.00	1.00	.90
Missouri River.....	1.50	1.40	1.30	1.00	1.00	1.00	1.20	1.00	.95	.85

January 13, 1904: All classes read the same as from New York.

January 1, 1909: Fifth, A, B, C, D, and E classes were cut out from groups B and C (New York and Boston territories); balance of rates remained the same.

APPENDIX B.

Statement showing certain traffic statistics for the years ending June 30, 1910 and 1901, as reported to the Interstate Commerce Commission by the roads named.

Railroads.	Average mileage operated during year.		Operating revenue per mile of road.		Net operating revenue per mile of road.		Number of tons carried one mile per mile of road.		Number of passengers carried one mile per mile of road.	
	1910	1901	1910	1901	1910	1901	1910	1901	1910	1901
The Atchison, Topeka & Santa Fe Ry. Co.	7,439.00	6,680.72	\$11,900	\$7,117	\$4,180	\$3,987	737,877	612,880	141,341	100,100
The Atchison, Topeka & Santa Fe Ry. Co.		4,812.00		7,841		2,300		665,000		97,741
The San Francisco & San Joaquin Valley Ry. Co.		373.37		4,940		930		100,000		91,042
The Santa Fe Pacific R. R. Co.		987.00		7,872		2,970		940,400		91,000
Southern California Ry. Co.		487.37		6,133		2,385		170,940		90,941
The California Eastern Ry. Co.		29.44		720		220		2,817		2,441
San Joaquin Ry. Co.		20.00		1,541		720		15,400		4,000
Arizona & Utah Ry. Co.		20.00		1,000		300		(*)		(*)

* This item, based on returns for 1901 made by seven roads indicated, is inserted for substantial comparison with corresponding item for 1910 shown for the Atchison, Topeka & Santa Fe Ry. Co.

† Decided in Atchison, Topeka & Santa Fe Ry. Co., April 1, 1901, but for convenience the operations of the property were separately reported for the entire year ended June 30, 1901.

‡ Decided in Atchison, Topeka & Santa Fe Ry. Co., July 1, 1900.

§ Decided to and merged in Atchison, Topeka & Santa Fe Ry. Co., January 31, 1900.

|| Shown as a proprietary company in 1910 report of Atchison, Topeka & Santa Fe Ry. Co.

¶ Reorganized as Western Arizona Ry. Co., December 31, 1900; shown as a proprietary company in 1910 report of Atchison, Topeka & Santa Fe Ry. Co.

‡ Data not reported.

Statement of gross and net earnings for years ending June 30, 1910 and 1901, as reported to the Interstate Commerce Commission by the roads named.

Railroads.	Operating revenue.		Net operating revenue.	
	1910	1901	1910	1901
The Atchison, Topeka & Santa Fe Ry. Co.	\$95,971,213	\$47,280,720	\$61,088,940	\$19,000,000
The Atchison, Topeka & Santa Fe Ry. Co.		25,940,910		18,467,074
The San Francisco & San Joaquin Valley Ry. Co.		1,000,000		100,000
The Santa Fe Pacific R. R. Co.		7,070,000		2,070,770
Southern California Ry. Co.		2,000,000		1,000,000
The California Eastern Ry. Co.		21,500		2,000
San Joaquin Ry. Co.		40,000		21,000
Arizona & Utah Ry. Co.		80,000		2,000

* This item, based on returns for 1901 made by seven roads indicated, is inserted for substantial comparison with corresponding item for 1910 shown for the Atchison, Topeka & Santa Fe Ry. Co.

† Decided in Atchison, Topeka & Santa Fe Ry. Co., April 1, 1901, but for convenience the operations of the property were separately reported for the entire year ended June 30, 1901.

‡ Decided in Atchison, Topeka & Santa Fe Ry. Co., July 1, 1900.

§ Decided to and merged in Atchison, Topeka & Santa Fe Ry. Co., January 31, 1900.

|| Shown as a proprietary company in 1910 report of Atchison, Topeka & Santa Fe Ry. Co.

¶ Reorganized as Western Arizona Ry. Co., December 31, 1900; shown as a proprietary company in 1910 report of Atchison, Topeka & Santa Fe Ry. Co.

APPENDIX C

Dealership and Sales by Automobile, Ltd.

References

Change in Revenue	\$ 1,000
Minimum River (Burlington) in Revenue	\$ 1,000
Fixed River (Cuba) in Revenue	\$ 1,000

Notes on contributors, invited, to Symposium, Oct

Description	1940		1941		1942		1943		1944		1945	
	Yr.	Mo.	Yr.	Mo.	Yr.	Mo.	Yr.	Mo.	Yr.	Mo.	Yr.	Mo.
1. General expenses for maintenance of equipment, including repairs, painting, and other work on the ship, and for the purchase of spare parts and materials.	1940	12	1941	12	1942	12	1943	12	1944	12	1945	12
2. Fuel, oil, and other consumables for the engine and other machinery.	1940	12	1941	12	1942	12	1943	12	1944	12	1945	12
3. Water, food, and other supplies for the crew.	1940	12	1941	12	1942	12	1943	12	1944	12	1945	12
4. Medical supplies and services for the crew.	1940	12	1941	12	1942	12	1943	12	1944	12	1945	12
5. Postage and telegraph charges.	1940	12	1941	12	1942	12	1943	12	1944	12	1945	12
6. Insurance charges.	1940	12	1941	12	1942	12	1943	12	1944	12	1945	12
7. Other miscellaneous expenses.	1940	12	1941	12	1942	12	1943	12	1944	12	1945	12
8. Total.	1940	12	1941	12	1942	12	1943	12	1944	12	1945	12

Price is reasonable, subject to payment. See *Contract*

[illegible]

State or commodity, as used, is *Barman*, Cal.—Continued.

Date	Total		By		To	
	Debit	Credit	Debit	Credit	Debit	Credit
1890						
Jan 1						
Jan 2						
Jan 3						
Jan 4						
Jan 5						
Jan 6						
Jan 7						
Jan 8						
Jan 9						
Jan 10						
Jan 11						
Jan 12						
Jan 13						
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Mar 16						
Mar 17						
Mar 18						
Mar 19						
Mar 20						
Mar 21						
Mar 22						
Mar 23						

Rates on commodities, carload, to Sacramento, Cal.—Concluded.

Commodities.	Chicago.		Mississippi River.		Missouri River.	
	Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.	Rate per 100 pounds.	Rate per ton per mile.
Staves and heading, rough or finished, and hoops, also wine tanks (k. d.); minimum weight, 40,000 pounds.	\$0.85	Cents. 0.7783	\$0.85	0.8572	\$0.85	1.0011
Stoves (cast iron) cooking, heating; minimum weight, 24,000 pounds.	1.30	1.1904	1.30	1.3111	1.30	1.5416
Stovepipe (including stovepipe iron cut in shape nested) stovepipe elbows, tiles, and thimbles; minimum weight, 20,000 pounds.	1.25	1.1446	1.25	1.2607	1.25	1.4766
Sulphur, in packages; minimum weight, 40,000 pounds.	.75	.6868	.75	.7564	.75	.8509
Sweat and collar pads and harness pads (not leather), boxed or in bales; minimum weight, 20,000 pounds.	1.25	1.1446	1.25	1.2607	1.25	1.4766
Sirup (corn, glucose, malt, maple, and rock candy) and molasses.	.75	.6868	.75	.7564	.75	.8509
Sirup, n. o. s.	1.25	1.1446	1.25	1.2607	1.25	1.4766
Tapioca and tapioca flour, in packages; minimum weight, 40,000 pounds.	.90	.8241	.90	.9077	.90	1.0632
Tes, boxed; minimum weight, 24,000 pounds.	1.25	1.1446	1.25	1.2607	1.25	1.4766
Terra cotta, building.	.75	.6868	.75	.7564	.75	.8509
Tinware, n. o. s.; minimum weight, 22,000 pounds.	1.20	1.0959	1.20	1.2162	1.20	1.4176
Tubs, stationary wash, cast iron; minimum weight, 24,000 pounds.	1.40	1.2820	1.40	1.4120	1.40	1.6538
Turpentine, spirits of.	1.25	1.1446	1.25	1.2607	1.25	1.4766
Twine and cordage, viz. cotton, flax, hemp, jute, fleece, sail, spring, steel, manila and cotton seine twine and cordage.	.95	.8605	.95	.9581	.95	1.1222
Varnish, in barrels, or in cans, boxed.	.95	.8605	.95	.9581	.95	1.1222
Wagons, farm, and common dump carts, without springs; minimum weight, 24,000 pounds.	1.25	1.1446	1.25	1.2607	1.25	1.4766
Wheelbarrows, (k. d.); wheelbarrow wheels and barrel carts, (k. d.); minimum weight, 24,000 pounds.	1.00	.9157	1.00	1.0085	1.00	1.1907
Windmills and parts of same, including tanks and towers; minimum weight, 24,000 pounds.	1.25	1.1446	1.25	1.2607	1.25	1.4766
Wire fencing in rolls and coarse wire netting for fencing.	.80	.7326	.80	.8038	.80	.9456
Wire rope and cable.	1.10	1.0073	1.10	1.1094	1.10	1.2994
Woodenware; minimum weight, 16,000 pounds.	1.35	1.2362	1.35	1.3625	1.35	1.5943
Zinc, sheet, in casks or boxes; minimum weight, 40,000 pounds.	1.25	1.1446	1.25	1.2607	1.25	1.4766

APPENDIX D.

[From brief of railroad commission of Nevada.]

COMPLAINANT'S EXHIBIT No. 47.—Showing shipments moving to Reno from eastern territory via Ogden gateway in calendar year 1908, showing point of origin, total receipts under present rates, receipts of Southern Pacific Company under present rates, and receipts of Southern Pacific Company under proposed rates; statement also shows receipts per ton per mile on total movement under present rates and receipts per ton per mile under proposed rates.

(Groups, classification, tonnage, and revenue, including Southern Pacific Company's proportion, taken from the waybills in Reno freight office of the Southern Pacific Company by the Railroad Commission of Nevada.)

1	Weight in tons.			5	6	7	8	9	10	11	12
	2	3	4								
Originating in group—	C. L.	L. C. L.	Total.	Total revenue under present rates.	Total revenue under proposed terminal rates.	Revenue of Southern Pacific Company under present rates.	Revenue of Southern Pacific Company under proposed terminal rates.	Receipts per ton per mile under present rates on total haul.	Receipts per ton per mile under proposed rates on total haul.	Receipts per ton per mile Ogden to Reno under present rates.	Receipts per ton per mile Ogden to Reno under proposed or terminal rates.
B.....	183	70	253	\$10,634.21	\$6,619.86	\$5,080.18	\$1,905.53	Cents. 1.3107	Cents. 1.2880	Cents. 1.4100	Cents. 1.4100
C.....	2,030	685	2,715	102,093.44	66,770.65	\$5,135.16	22,902.36	1.4450	1.4450	2.8932	1.5330
D.....	2,207	597	2,804	89,621.20	65,255.18	50,029.20	23,663.18	1.1439	1.1439	2.8932	1.5330
E.....	1,401	173	1,574	52,043.16	40,428.39	34,041.32	21,423.55	1.4416	1.4416	2.8932	1.5330
F.....	1,950	68	2,018	68,158.73	61,093.44	36,287.81	29,222.52	2.2949	2.0372	3.8222	2.2949
G.....	1,401	173	1,574	52,043.16	40,428.39	34,041.32	21,423.55	1.4416	1.4416	2.8932	1.5330
H.....	1,696	44	1,740	56,359.23	25,577.55	13,566.74	12,785.09	1.2091	1.1731	1.4710	1.3862
I.....	619	44	663	19,442.70	10,442.11	11,467.56	5,063.97	1.4311	1.4311	3.1431	1.3862
Wheat, salt, barley, cement, and coal from Idaho, Utah, and Wyoming.			11,177	78,679.92	78,679.92	59,008.44	59,008.44	.7825	.7825	.9603	.9603
Total.			23,322	454,342.00	303,865.23	268,516.40	178,037.94	1.3500	1.1186	2.0633	1.3579

Average cost per ton per mile for operating expenses (1908) Ogden to Reno, 4.86 mills.

Average receipts per ton per mile for operating expenses (1907) on entire Central Pacific Railway, 7.04 mills.

Average receipts per ton per mile on Southern Pacific system, 1.21 cent.

Average revenue per ton per mile on Ogden to Reno under present rates, \$11.31.

Average revenue upon each ton Ogden to Reno under proposed or Pacific coast terminal rates, \$7.02.

LOW-GRADE PRODUCTS.

Referring to this exhibit, attention may be directed to the fact that 56 per cent of the total tonnage (23,322) consisted of low-grade products, and were as follows:

	Tons.		Tons.
Coal.....	5,225	Oats.....	495
Wheat.....	4,334	Barley.....	338
Cement.....	1,242	Grits.....	200
Marble and stone.....	445	Lumber.....	69
Brick.....	103		
Salt.....	370	Total.....	13,101
Corn.....	278		

Out of the 13,101 tons of low-grade products it will be noted by reference to the bottom column of Exhibit No. 47 that 11,177 tons of said products moved into Reno from Idaho, Utah, and Wyoming at rates which did not exceed Pacific coast terminal rates.

The footnote on bottom of Exhibit No. 47 shows the average receipts per ton-mile on the Southern Pacific for the year 1909 as 1.21 cents. In comparison therewith attention is directed to column No. 10, Exhibit No. 47, wherein is shown receipts per ton-mile covering movement of freight from each group territory, at Pacific coast terminal rates, with total average receipts of 1.1156 cents, or in other words, this would be the receipts accruing if the business moved through to San Francisco. Column 12 shows receipts per ton-mile covering actual movement of freight from group territories, at proposed or Pacific coast terminal rates to Reno, with a total average of 1.3879 cents or 1.58 mills in excess of the average receipts for the Southern Pacific system as a whole.

Of course, at Winnemucca and, in fact, all main-line points east of Reno to the Nevada-Utah state line the excess receipt per ton-mile over the average for the system as a whole will be correspondingly greater as we move eastward, or rather as the haul from Ogden westward is shortened. On the basis of this comparative revenue showing alone it is conclusive that the application of Pacific coast terminal rates to Southern Pacific main-line points in Nevada would be more than compensatory.

COST OF OPERATION BETWEEN OGDEN AND SPARKS.

Regarding the cost of operation between Ogden and Sparks based upon the total west-bound movement of freight for the 11 months ending November 30, 1908, furnished by Mr. T. F. Rowlands, assistant superintendent Southern Pacific Company at Sparks, Nev., upon request of the railroad commission of Nevada, and the revenue per ton accruing from Ogden to Reno (Reno being 3 miles west of Sparks), predicated upon the actual movement of 23,322 tons of west-bound freight received at Reno from all eastern territory for the calendar year 1908, it may be stated that a detailed showing is made in complainant's Exhibits No. 37, 44, 47, and 48.

Before contrasting the revenue to the cost of the service, we shall, for convenience, set forth herein recapitulated portions of said exhibits.

Total gross tonnage moved Ogden to Sparks, distance 538½ miles, January 1, to December 1, 1908, 1,816,346 tons.

This tonnage was moved in 51,845 cars and 1,279 trains.

Average weight of car used in finding net weight of contents, 18 tons.

Gross weight of cars, 933,210 pounds.

Net weight of freight, 883,237 pounds.

For the year 1907 on the Central Pacific Railway, Mr. Seger shows that 79.3 per cent was commercial and 20.7 per cent was company freight.

Applying the same proportion for 1908 we find the commercial freight represented in the above tonnage is 600,407 tons.

Dividing 1,279 trains into the above commercial freight tonnage, we have an average of 539.9 tons per train.

The average cost of operation per freight-train-mile on the Central Pacific Railway in 1907 (as shown by Seger) was \$2.36.

The average cost of operation per train-mile on the Central Pacific in 1907 (as shown by annual report) was \$1.77, while the average cost in 1908 is shown to be \$1.989, or an increase in cost of 12.36 per cent.

Applying the 12.36 per cent increase to the \$2.36, and we find the average cost of operation per freight-train-mile for the year 1908 is \$2.65.

Applying \$2.65 cost per freight-train-mile to the number of miles, Ogden to Sparks, 538.5, and we find the average cost of operation (all expenses) of moving one train from Ogden to Sparks is \$1,427.02.

Dividing 539.9 tons per train into \$1,427.02, the cost per train, and we find the average cost of operation per ton of commercial freight from Ogden to Sparks is \$2.64, or if further divided by 538.5, the mileage, 4.88 mills per ton-mile.

[NOTE.—If the company freight was included the average per train would be 690 tons instead of 539.9, and divided into \$1,427.02, the cost per train, we find the average cost of operation per ton from Ogden to Sparks is \$2.08, or if divided by 538.5, the mileage, 3.85 mills per ton-mile.]

The Southern Pacific Company received as its proportion of the rates covering the movement of 23,322 tons of commercial freight from all eastern territory to Reno in 1908 an average revenue of \$11.51 per ton, or 4.3 times the average cost of service from Ogden to Reno.

If rates no higher than Pacific coast terminal rates had been in effect to Nevada main-line points, and covered the movement of the said 23,322 tons of commercial freight from Ogden to Reno in 1908, the average revenue accruing to the Southern Pacific Company would have been \$7.63 or 2.9 times the average cost of service.

Briefly, the foregoing deductions indicate the scientific and conclusive manner in which the earnings and expenses covering west-bound business have been segregated and assigned to the Central Pacific mileage from Ogden to Sparks.

COST AND REVENUE.

Applying the average operating expenses of 4.88 mills per ton per mile to Nevada main-line points according to respective distances of west-bound haul from Ogden, and contrasting therewith \$11.51 and \$7.63, the average revenue heretofore shown, the results obtaining are interesting and instructive.

The following tables express the matter forcefully:

TABLE No. 1.

From Ogden to—	Distance.	Average cost of moving 1 ton (all expenses) on basis of 4.88 mills per ton per mile.	Average revenue per ton on basis of actual amount received from westbound business at Reno, 1908.	Percentage of operating expenses to revenue.	Percentage of net revenue from operation.
1	2	3	4	5	6
	<i>Miles.</i>				
Tecoma, Nevada-Utah state line.....	113.5	\$0.53	\$11.51	4.6	85.4
Cobre.....	137.5	.67	11.51	6.0	94.0
Wells.....	174.8	.85	11.51	7.5	92.5
Elko.....	226.3	1.10	11.51	9.5	90.5
Fallsdale.....	256.6	1.23	11.51	10.7	89.3
Battle Mountain.....	306.5	1.49	11.51	13.0	87.0
Golconda.....	348.3	1.60	11.51	14.7	85.3
Winnemucca.....	365.0	1.78	11.51	16.0	84.0
Imlay.....	398.0	1.94	11.51	17.0	83.0
Loveock.....	438.0	2.13	11.51	18.5	81.5
Hazen.....	494.2	2.41	11.51	21.0	79.0
Reno.....	540.0	2.64	11.51	23.0	77.0

NOTE.—It will be observed that the percentage of operating expenses to operating revenues for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Compare these figures with those in columns 5 and 6. They indicate conclusively that the old rates are grossly exorbitant.

TABLE No. 2.

From Ogden to--	Distance.	Average cost of moving 1 ton (all expenses) on basis of 4.98 mills per ton per mile.	Average revenue per ton on basis of proposed or Pacific coast terminal rates.	Percentage of operating expenses to revenue.	Percentage of net revenue from operation.
1	2	3	4	5	6
	<i>Miles.</i>				
Tacoma, Nevada-Utah state line.....	113.5	\$0.53	\$7.63	7.0	93.0
Cobro.....	137.5	.67	7.63	9.0	91.0
Wells.....	174.8	.85	7.63	11.0	89.0
Elko.....	226.3	1.10	7.63	14.5	85.5
Pallade.....	256.6	1.23	7.63	16.0	84.0
Battle Mountain.....	306.5	1.49	7.63	19.0	81.0
Golconda.....	345.3	1.69	7.63	22.0	78.0
Winnemucca.....	365.0	1.73	7.63	23.0	77.0
Imlay.....	398.0	1.94	7.63	25.5	74.5
Lovelock.....	408.0	2.13	7.63	28.0	72.0
Hazen.....	494.2	2.41	7.63	31.5	68.5
Reno.....	540.0	2.64	7.63	34.5	65.5

NOTE.—Attention is directed to the fact that the percentage of operating expenses to operating revenues for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Contrast these figures with those in columns 5 and 6 and they indicate that Pacific coast terminal rates applied at Nevada main-line points are unreasonably high and more than a fair compensation.

The following table is made on the basis of 3.85 mills per ton per mile, the average cost of operation covering the movement of all freight business (company and commercial) from Ogden to Sparks in 1908. Cost of operation per ton is shown from Ogden to Nevada main-line points, after which the cost is compared with \$7.63, the average Pacific coast terminal rate revenue, and the operating results set forth in percentages.

TABLE No. 3.

From Ogden to--	Distance.	Average cost of moving 1 ton (all expenses) on basis of 3.85 mills per ton per mile.	Average revenue per ton on basis of proposed or Pacific coast terminal rates.	Percentage of operating expenses to revenue.	Percentage of net revenue from operation.
1	2	3	4	5	6
	<i>Miles.</i>				
Tacoma, Nevada-Utah state line.....	113.5	\$0.45	\$7.63	6.0	94.0
Cobro.....	137.5	.53	7.63	7.0	93.0
Wells.....	174.8	.67	7.63	9.0	91.0
Elko.....	226.3	.87	7.63	11.5	88.5
Pallade.....	256.6	.973	7.63	13.0	87.0
Battle Mountain.....	306.5	1.13	7.63	15.0	85.0
Golconda.....	345.3	1.34	7.63	17.3	82.8
Winnemucca.....	365.0	1.40	7.63	18.5	81.5
Imlay.....	398.0	1.64	7.63	20.0	79.0
Lovelock.....	408.0	1.68	7.63	23.0	76.0
Hazen.....	494.2	1.90	7.63	25.0	73.0
Reno.....	540.0	2.09	7.63	27.0	73.0

NOTE.—The above table shows that the percentage of operating expenses to operating revenues for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Contrast these figures with those in columns 5 and 6, and the result is clear at a glance.

The following table is made on the basis of 7 mills per ton per mile, the average cost of operation (all expenses) of the commercial freight business of the Southern Pacific system as a whole. Included therein is the extraordinarily expensive operation of the freight-train service over the Sierra Nevada, Tehachapi, and Siskiyou mountains, numerous branch lines, local freight-train service, and the expenses incidental to the handling of company freight, the tonnage of which did not enter into the calculation in finding the average commercial ton-mile cost.

Cost of operation per ton is shown from Ogden to Nevada main-line points according to respective distances, after which the costs are contrasted to \$7.63, the average Pacific coast terminal rate revenue, and the operating results set forth in percentages.

TABLE No. 4.

From Ogden to—	Distance.	Average cost of moving 1 ton (all expenses) on basis of 7 mills per ton per mile.	Average revenue per ton on basis of proposed or Pacific coast terminal rates.	Percentage of operating expenses to revenue.	Percentage of net revenue from operation.
1	2	3	4	5	6
	<i>Miles.</i>				
Tecoma, Nevada-Utah state line.....	112.5	\$0.79	\$7.63	10.5	88.5
Cuba.....	127.5	.96	7.63	12.5	87.5
Wells.....	174.8	1.22	7.63	16.0	84.0
Elko.....	225.3	1.58	7.63	21.0	79.0
Palmdale.....	256.6	1.79	7.63	23.5	76.5
Battle Mountain.....	305.8	2.15	7.63	28.0	72.0
Colton.....	348.3	2.44	7.63	32.0	68.0
Winnemucca.....	365.0	2.56	7.63	34.0	66.0
Imley.....	388.0	2.79	7.63	36.0	64.0
Levelock.....	433.0	3.08	7.63	40.0	60.0
Hazen.....	494.2	3.46	7.63	45.0	55.0
Reno.....	540.0	3.78	7.63	50.0	50.0

NOTE.—Attention is directed to the fact that the percentage of operating expenses to operating revenue for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Compare these figures with those in columns 5 and 6 and they prove conclusively that Pacific coast terminal rates applied as the maximum at Nevada main-line points are unreasonably high and more than a fair compensation.

The following table is made on the assumption that the cost of operation of west-bound transcontinental freight, moving in maximum trainload lots does not exceed 2.26 mills per ton per mile from Ogden to Reno, 4.52 mills from Reno to Sacramento, and 2.50 mills from Sacramento to San Francisco, or an average of 2.74 mills from Ogden to San Francisco.

Cost of operation per ton is shown from Ogden to various important main-line points, after which the costs are contrasted to \$7.63, the average Pacific coast terminal rate revenue, and the operating results set forth in percentages.

TABLE NO. 5.

From Ogden to—	Distance.	Average cost of moving 1 ton (all expenses) on basis of 2.25 miles to Reno, 4.52 miles to Sacramento, 2.55 miles to San Francisco.	Average revenue per ton on basis of proposed or Pacific coast terminal rates.	Percentage of operating expenses to revenue.	Percentage of net revenue from operation.
1	2	3	4	5	6
	<i>Miles.</i>				
Elio.....	275.2	\$6.51	\$7.63	4.7	91.3
Winnemucca.....	245.0	.82	7.63	11.0	89.0
Basco.....	494.2	1.11	7.63	14.5	85.5
Reno.....	545.6	1.22	7.63	16.0	84.0
Sacramento.....	650.0	1.92	7.63	25.0	75.0
San Francisco.....	765.0	2.15	7.63	28.0	72.0

NOTE.—Attention is directed to the fact that the percentage of operating expenses to operating revenue for the Southern Pacific system as a whole is 56 per cent, or 44 per cent net revenue from operation. Compare these figures with those in columns 5 and 6 and they indicate conclusively that transcontinental rates to Pacific coast terminals are certainly more than a mere trifle above "cost of transportation," and that in fact, they are, considering "all expenses," highly compensatory.

The foregoing tables prove conclusively the merits of our earnest contention for the absolute enforcement of the fourth section.

PROPOSED RATES FULLY COMPENSATORY.

The relationship of earnings to expenses is set forth so clearly and simply that only a superficial study of the tables should be necessary to convince even the most skeptical that the application of higher than Pacific coast terminal rates, on west-bound transcontinental business to all intermountain transcontinental-line points, is nothing less than a clumsily devised scheme "to get the money," irrespective of the value of the service, and without regard to the unreasonable burden cast upon the people by these discriminatory and unlawful rates.

To contend that such a scheme of rate making as this should be maintained in the interest, mainly, of the railroads and a few jobbers immediately on the Pacific coast line is monstrous and entirely beyond any conception of justice and fair dealing on the part of the railroads reaching the Pacific coast in discharging their duty as common carriers to the people of the intermountain territory.

BEFORE THE
Interstate Commerce Commission.

APPLICATIONS FOR RELIEF UNDER THE FOURTH
SECTION: Nos. 205, 342, 343, 344, 349, 350, and 352.

No. 879.

CITY OF SPOKANE ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

No. 2662.

COMMERCIAL CLUB, TRAFFIC BUREAU, OF SALT LAKE
CITY, UTAH,

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Decided June 22, 1911.

SUPPLEMENTAL REPORT OF THE COMMISSION.

**APPLICATIONS FOR RELIEF UNDER THE FOURTH
SECTION: Nos. 343, 342, 343, 344, 345, 350, and 352.**

No. 379.

CITY OF SPOKANE ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

No. 3462.

**COMMERCIAL CLUB, TRAFFIC BUREAU, OF SALT LAKE
CITY, UTAH,**

v.

**ATCHINSON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.**

Submitted March 22, 1911. Decided June 22, 1911.

1. The General statements prepared by the parties and the Commission for the purpose of ascertaining the facts relevant which would result from applying rates found to be reasonable by the Commission in its opinion of June 1, 1910, disclose nothing which change the opinion as to the reasonableness of the rates thus suggested. On the other hand it is concluded there is no reason why these rates should not now be established.
2. Since the promulgation of the opinion the fourth section has been amended. Inasmuch as the provisions of the complaint of the city of Spokane and its association of Salt Lake City are directed against the violation of the fourth section, it is necessary to again inquire whether, under the amended fourth section, the relief to which these associations are entitled can now be granted.
3. The complainants contend that the proviso in the amended section, permitting the Commission to continue to enforce its orders to enforce the charging of a higher rate at the intermediate points, is void as a delegation of legislative authority; that it should be rejected and the action applied by the Commission as though it were an absolute long and short haul prohibition. This contention is not sustained.
4. The defendants contend that the effect of the amendment is to rest upon the parties the burden of showing the initiative in justifying the higher rate at the intermediate points. Upon investigation it is found that competitive rates at the same intermediate and not at the intermediate points, thus the Commission must, without further inquiry, grant the relief asked for, if so much competition exists as to not deny the application. This contention is not sustained.

5. In amending the fourth section by striking out the words "similar circumstances and conditions" Congress intended to invest the Commission with authority not only to determine whether a wrong results from the disregard of the long-and-short-haul provision, but also to correct that wrong if found to exist.
6. In determining whether the carrier shall be permitted to make the higher intermediate charge the Commission can not act arbitrarily but must apply the principles which control it in the administration of the other portions of the act. It must inquire whether the maintenance of the higher intermediate rate will result in unreasonable charges or unjust discriminations. If so the permission must be refused; otherwise it must be granted.
7. The Commission may prescribe in any way that is definite and certain the extent to which the intermediate rate may exceed the long distance rate in cases where this is necessary to prevent unreasonable rates or unjust discriminations.
8. In dealing with the situation presented by these cases and the applications of the carrier the United States has been divided into five zones. From zone 1 established rates must not be higher at any intermediate point than to a more distant point. From zone 2 the rates to intermediate points may exceed those to more distant points by not over 7 per cent; from zone 3 by not over 12 per cent, and from zone 4 by not over 18 per cent. No opinion is expressed as to zone 5.
9. The rates found reasonable in the opinion of June 5, 1905, in the Salt Lake case, ordered to be established.

H. M. Stephens for city of Spokane and others.

B. H. Baklund and B. H. Low for Commercial Club, Traffic Bureau, of Salt Lake City.

Hale Holden and E. C. Lindley for Great Northern Railway Company and Chicago, Burlington & Quincy Railroad Company.

B. H. Loomis, P. L. Williams, C. W. Durbey, W. W. Cotton, G. W. Lane, H. M. Gurnea, J. C. Smith, and H. A. Benedict for Union Pacific Railroad Company, Oregon-Washington Railroad & Navigation Company, Oregon Short Line Railroad Company, and Southern Pacific Company.

Charles Donnelly and J. M. Donagford for Northern Pacific Railway Company.

Edward Chambers, Gordon Lathrop, and G. F. Nicholas for Astoria, Tientsin & Pacific Co. Railway Company.

James C. Jeffery for Missouri Pacific Railway Company and Denver & Rio Grande Railroad Company.

H. C. Barlow for Chicago Association of Commerce.

Louis D. Brandeis, D. C. Fox, and E. C. Reed for Merchants' Association of New York, Eastern Chamber of Commerce, and 10 other eastern commercial organizations.

Edward H. Green for The Dulles, Canada & Chatham, and Williams Valley Railway Companies.

B. H. Gordon for Transcontinental Freight Bureau.

P. V. Ogden for Business Men's League of St. Louis.

W. C. Hendley for shippers in western Oregon.

A. B. Kelly for Philadelphia Chamber of Commerce.

B. J. McLean for Omaha Commercial Club.

J. R. Peabody for Portland Chamber of Commerce, Seattle Chamber of Commerce, and Tacoma Trade Association.

James J. Peabody for Chicago Association of Commerce.

E. E. Williamson for Shippore Association of Charleston.

COMMERCIAL TRAVEL ON THE COASTS.

Passes, Commissions.

On June 7, 1911, the Commission published a report in each of the above cases, in which it found certain dues and commodity rates to be reasonable. The dues were established in No. 479, and are now in effect, but no action was at that time made with respect to the commodity rates in either case, as that case is No. 1000.

The rates suggested by the Commission involved material reductions from those in effect, and the Commission held that the establishment of these rates in the completing legislation would require an excessive multiplication of other rates in various other localities. The Committee believed that the resulting law in commerce would be so great as to deprive them of a proper return upon their investment, and that, therefore, this Commission should act and could not lawfully put them into effect.

The Commission had before it in making its findings figures which showed with substantial accuracy the losses which would result in the carrying of the prices involved, but it had only a very general and unsatisfactory estimate as to what other law in commerce would be needed by changes at other points. For the purpose of obtaining more exact information upon this subject and to the end that no action of any kind might be lawfully taken as to other law in commerce of an order.

It was to obtain an accurate notion of how serious losses certain representative routes were affected, and the rates suggested by the Commission were applied to the business actually carrying during those months in the localities affected by the alteration of the Commission. During those months as fully typical as could be found for such results in those points was determined.

There was also required to state the rates which in their opinion could be established at other points in consequence of the putting in of the rates of the Commission in the completing legislation, and did so. These rates were applied to the actual movement of cargo during the selected months, and the loss of revenue for an entire year was determined.

We have before us, therefore, the figures showing with substantial accuracy the loss law which would result in the alteration of the rates suggested by the Commission were to be made effective, provided the movement of cargo continued the same and the law

nothing to show anyone which would indicate as to the proper use of the
or as the responsibility of the suggested work or that it was
getting from some other office. The law is substantially that the
system which was before the Commission when it became the
subject had indicated and was handling a responsibility that the
case was found to be essential. In the last instance of the case
is concerned, there is no reason why there was to be any other
case should not be so treated.

The end government of the complaint is No. 177 and the first is a report
the alleged discrimination against the city of Syracuse, which resulted
from the fact that the defendants charged from various points of
view in the city, the city of Syracuse, and other points, were somewhat more
than they were applied to Syracuse, although the facts were
through Syracuse in making these points. This is the first time
the case even is not of themselves responsible and while the city
policy has been established by the Commission, nevertheless the
my sense of the complaint was the violation of the basic system,
and in some extent the same position was derived in the last instance
case, No. 177.

The defendant's interest has received some more interest by some
provision, but the fact that the circumstances and conditions were
which were in Syracuse were much different from those existing in
Syracuse, and that for the reason the basic system did not apply.
The Commission found as a fact that there was some competition in
Syracuse, even somewhat which indicated the case was not really
any, and that that is true of the fact the defendant's complaint was
much more and as a discrediting attack is against the responsibility
of the defendant's case in Syracuse. It therefore stated that
there was no violation of the basic and basic system, and therefore
is not any other case that would. The system was expressed
the same the violation of the system of the city of Syracuse, the
the fact of the Commission was clearly to establish responsibility
in Syracuse, showing the system is not only not in the case of
the competitive point in the city of Syracuse, as long as there were
even not but that the fact was of the system and all was, therefore,
because a further case other than of really.

The Commission did that, in case of the other direction, was in
Syracuse from various sources right to justice in regard to the
fact of that upon these which the system was in the case of
and it would not be necessary of attending to the fact of the case
case that there, but in case of the fact of the fact of the fact
it required the fact of providing a statement of case in Syracuse
without reference to the case.

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In the opinion of June 7, 1910, 19 I. C. C. Rep., 162, at page 174, the Commission said:

In fixing these rates we have proceeded upon the view that, under the present decisions of the Supreme Court of the United States, we could not use the rate to Seattle as a standard by which to measure that to Spokane. If this were otherwise, if we were free to take into account all the competitive conditions existing both east and west and to determine what, in the light of all these conditions, would be a just and reasonable relation between the rates of Seattle and Spokane, a somewhat different question would be presented.

On June 18, 1910, subsequent to the promulgation of the foregoing opinion, the fourth section was amended. The city of Spokane claims that the amended section now in express terms forbids the discrimination against which that locality has always protested. It seems proper to inquire, therefore, whether, under that section in its present form, this discrimination is forbidden or can, if found to exist, be corrected by an order of this Commission. In this view we caused the applications of carriers for leave to depart from the rule of the fourth section in the making of these transcontinental tariffs to be assigned for hearing and argument at the same time with these and cognate cases. The questions presented under those applications have been elaborately discussed; additional testimony has been heard, and the whole matter is now before us for disposition. In disposing of it we have to inquire:

1. What is the duty and authority of the Commission under the present fourth section?

2. Can the Commission under that section make an order in one or both of these cases which will obviate the necessity of prescribing a schedule of reasonable rates?

Below is the fourth section as originally enacted:

That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this act.

No change was made in this section until June 18, 1910, when it was amended by striking out the words "under substantially similar circumstances and conditions." Certain additions were made to the section touching other matters, but the above is the only change which bears upon the question before us.

The most satisfactory way of determining the effect of this amendment is by inquiring what meaning had been put upon the omitted phrase and what the practical effect of that phrase had been upon the operation of the section itself.

When the act to regulate commerce took effect, in 1887, there were thousands of instances in all parts of the country where the long and short haul provision of the fourth section was violated. That section provided, as does the amended section, that the Commission might allow carriers to deviate from this rule, and numerous applications were filed asking the Commission to exercise its authority in that respect in favor of the applicants. One of the first and most serious tasks which confronted the Commission when it entered upon its work was to dispose of these applications. The whole subject was exhaustively considered in *In re Louisville & Nashville R. R. Co.*, 1 I. C. C. Rep., 31, and as a result certain conclusions were reached and stated by the Commission.

It was held that where the circumstances and conditions were dissimilar within the meaning of the section the long-and-short-haul rule did not apply and that the carriers must determine for themselves in the first instance whether that dissimilarity existed. The matter might subsequently be brought to the attention of the Commission by complaint, but until complaint was made or until the Commission saw fit upon its own initiative to proceed carriers must assume the responsibility.

The Commission then proceeded to state what facts would create the necessary dissimilarity under that section, holding that water competition or competition with rail carriers not subject to the act to regulate commerce would do this, but that while there might be some exceptions, as a rule competition between carriers which were subject to the act and market competition could not under the fourth section justify the lower rate at a more distant point.

Upon the promulgation of this opinion carriers in some sections brought themselves generally into conformity with the views of the Commission, while in other sections but little attention was paid either to the fourth section or to the interpretation placed upon that provision by the Commission. It was the claim of these carriers that if competition of any sort existed at the more distant point this created the necessary dissimilarity of circumstances and conditions and removed the case from the prohibition of the fourth section. The attitude of these carriers was tantamount to an entire disregard of the section itself.

Numerous complaints were lodged with the Commission against these violations of the fourth section, and in attempting to dispose of them it became evident that under the interpretation adopted in the *Louisville & Nashville case* the section would have little or

no effective force. Finally, in *Georgia Railroad Commission v. Clyde Steamship Co.*, 5 I. C. C. Rep., 324, the Commission, after an exhaustive reexamination of the whole subject, reversed its previous decision in the *Louisville & Nashville case* to the effect that carriers must judge for themselves in the first instance whether the dissimilarity existed, holding that in all cases application must first be made to the Commission. Under this decision carriers could in no case depart from the rule of the fourth section without the permission of the Commission, and in determining whether that rule should be observed, only competition between water carriers and between carriers not subject to the act could be considered. All other forms of competition must be disregarded.

This subject finally reached the Supreme Court of the United States in what is known as the *Alabama Midland case*—*I. C. C. v. Alabama Midland Ry. Co.*, 168 U. S., 144.

In the main the opinion of the court fully sustained the contentions of the carriers. It held that where there was a dissimilarity of circumstances and conditions the rule of the fourth section did not apply, and that it was for the carriers themselves to determine in the first instance whether that dissimilarity did exist. It also held that all forms of competition must be considered in determining whether circumstances and conditions were similar at the two points.

The Commission understood this decision to mean that if circumstances and conditions were different at the more distant point, that of itself removed the case from the inhibition of the fourth section and from the jurisdiction of the Commission under that section. The Commission might inquire whether the dissimilarity existed, and if it found that it did not, might require carriers to cease and desist from making the higher charge at the intermediate point, but if it found that the dissimilarity did exist it could go no further; it had no power to inquire whether the dissimilarity justified the discrimination. In its annual report to Congress for the year 1897, in commenting upon the effect of this decision, it said, at page 43:

* * * That section [the fourth] enacts that the carrier shall not charge more for the short than for the long haul under substantially similar circumstances and conditions. If the circumstances and conditions are similar, the greater charge can not be made. If the circumstances and conditions are not similar, the section does not apply. The court holds that railway competition of controlling force makes the circumstances dissimilar. If, therefore, we find in a particular case that competition of controlling force actually exists, that ends the matter. We have no power to say whether, nor to what extent, such competition justifies the higher rate to the intermediate point.

The third section is still left, and under that section we may inquire whether under all the circumstances the rates as adjusted give an undue preference to the competitive point, but the fourth section is by this decision eliminated from the act.

While the effect of the *Alabama Midland case* in the actual application of the fourth section seemed to be exactly as stated above by the Commission, there is, nevertheless, some language in the opinion which leaves room for a different interpretation. For example, at page 167 of that opinion, the court said:

In order further to guard against any misapprehension of the scope of our decision, it may be well to observe that we do not hold that the mere fact of competition, no matter what its character or extent, necessarily relieves the carrier from the restraints of the third and fourth sections, but only that these sections are not so stringent and imperative as to exclude in all cases the matter of competition from consideration in determining the question of "undue or unreasonable preference or advantage," or what are "substantially similar circumstances and conditions." The competition may in some cases be such as, having due regard to the interests of the public and of the carrier, ought justly to have effect upon the rates, and in such cases there is no absolute rule which prevents the Commission or the courts from taking that matter into consideration.

Certain of the inferior federal courts took a somewhat different view of the decision from that of the Commission, insisting that it was the duty of the Commission in cases arising under the fourth section to inquire, not merely whether circumstances and conditions differed at the longer-distant point, but whether, under all the circumstances, the discrimination was or was not justifiable.

Severens, district judge, speaking in reference to certain language of the Commission similar to the above, said:

Now, I do not understand that such a conclusion follows from that decision. On the contrary, I suppose that when a violation of the long-and-short-haul provision is charged, competition is one of the elements which enter into the determination whether the conditions are similar, and if dissimilarity is found, then the further question arises whether the dissimilarity is so great as to justify the discrimination which is complained of. The language of the act ought not to be tied up by such literal construction. If it were, then if it should be found that the dissimilarity of conditions is really in favor of the locality discriminated against, the provision would not apply—a result contrary to the manifest intent. In other words, my opinion is that the restraint of section 4 is to be applied upon the scale of comparison between the dissimilarity of conditions and the disparity of rates, and that it is competent under that section to restrain the exaction of the greater charge for the shorter haul, although there may be a substantial dissimilarity of conditions, provided the dissimilarity is not so great as to justify the discrimination made. *I. C. C. v. East Tennessee, V. & G. Ry. Co.*, 85 Fed. Rep., 107, 118.

The circuit court of appeals, having the same case before it, held that the inquiry was not merely, Are conditions dissimilar at the farther point, but that circumstances and conditions at both points should be considered. *E. T., V. & G. Ry. Co. v. I. C. C.*, 99 Fed. Rep., 52.

The Commission itself, somewhat reanimated by the dicta of these judges, adopted a similar view which it endeavored to apply in one or two instances. It held, for example, in the *Danville case*,

8 I. C. C. Rep., 409, that competition did exist at Lynchburg, the more distant point, which did not exist at Danville, the intermediate point, and that therefore rates to Lynchburg might properly be somewhat lower than to Danville but that the difference ought not to be as great as that enforced by the tariffs of the defendants, and it ordered the carriers to cease and desist from maintaining a greater discrimination against Danville than was found by its opinion to be proper.

Again, in *Board of Trade of the City of Hampton, Fla., v. N., C. & St. L. Ry. Co.*, 8 I. C. C. Rep., 503, we held that rates to Palatka, the more distant point from certain points of origin, might properly be lower than to Hampton, the intermediate point, but that the Hampton rate should not exceed the rate to Palatka by the full amount of the local, and we ordered carriers to cease and desist from maintaining the adjustment then in effect.

Proceedings were begun before the circuit court to enforce the orders of the Commission in both these cases, but in each case it was held by the circuit court of appeals that where dissimilarity of circumstances at the more distant point was shown, the Commission could only inquire as to whether the rate at the intermediate point was reasonable, and that the competitive rate at the more distant point could not be made the standard of the reasonable rate at the intermediate point. *I. C. C. v. N., C. & St. L. Ry. Co.*, 120 Fed. Rep., 934; *I. C. C. v. S. Ry. Co.*, 122 Fed. Rep., 800.

These cases were never brought to the attention of the Supreme Court, for the reason that that court had meantime apparently decided the question adversely to the contention of the Commission in *E. T., V. & G. Ry. Co. v. I. C. C.*, 181 U. S., 1.

The complainant in the proceeding before the Commission out of which that suit grew was the city of Chattanooga, and its complaint was that carriers leading through Chattanooga to Nashville made a lower rate from eastern points of origin to Nashville than to Chattanooga. The Commission had found that there was no water competition which forced this lower rate, but that there was a competition of railways and of markets which forced the defendants to accept the Nashville rates, and that if compelled to observe the long-and-short-haul provision they must either reduce their rates at Chattanooga or retire from the Nashville business. The Commission had ordered the carriers to cease and desist from charging more to Chattanooga than to Nashville, and this order had been affirmed first by the circuit court and afterwards by the circuit court of appeals. *E. T., V. & G. Ry. Co. v. I. C. C.*, *supra*.

The Supreme Court of the United States reversed all these findings and held that upon the admitted case competition did exist at the

more distant point which compelled the taking of the lower rate and, that this being so, circumstances and conditions were dissimilar and the fourth section not applicable. The following excerpt from the opinion clearly states the view of the court:

Although the Interstate Commerce Commission found as a fact that the competition at Nashville, which forms the basis of the contention in this case, was of such a preponderating nature that the carriers must either continue to charge a lesser rate for a longer haul to Nashville than was asked for the shorter haul to Chattanooga, or to abandon all Nashville traffic, nevertheless they were forbidden by the act of February 4, 1887, c. 104, 23 Stat., 379, to make the lesser charge for the longer haul; but since that ruling of the Commission was made it has been settled by this court in *Louisville & Nashville Railroad Company v. Behlmer*, 175 U. S., 648, and other cases cited, that competition which is controlling on traffic and rates produces in and of itself the dissimilarity of circumstances and condition described in the statute, and that where this condition exists a carrier has a right of his own motion to take it into view in fixing rates to the competitive point; and it follows that the construction affixed by the Commission to the statute upon which its entire action in this case was predicated was wrong.

This decision of the Supreme Court fully confirmed the interpretation which this Commission had placed upon the *Alabama Midland case*. If circumstances and conditions at the more distant point were dissimilar, carriers might without restraint depart from the long-and-short-haul rule. This virtually repealed that section, for the reason that it is always possible to show in the interlacing network of railways in this country, and in view of the intricate commercial conditions, that circumstances are different at one point from another. To hold that carriers may, wherever the dissimilarity exists, meet that competition or decline to meet it, partially meet it here and fully meet it there, is to hold that they may without practical restraint discriminate between different localities.

The Commission was forced to and did dismiss complaint after complaint upon the ground that there was a substantial dissimilarity of conditions at the more distant point, without inquiring whether, in point of fact, under the circumstances, the discrimination against the intermediate point should have been permitted. That provision of the section authorizing the Commission to prescribe the instances in which carriers might depart from the rule of the section and the extent of that departure could be given no practical effect.

The history of the judicial interpretation of this section has been given with tedious and apparently unnecessary detail, in order that the effect of the words "similar circumstances and conditions" upon the actual application of the statute might be clearly apprehended. The fourth section was for practical purposes a nullity. For 20 years this Commission has made no order of consequence under that section which could be enforced, and this because of the existence of these words. Their presence has rendered futile the prohibition of

the section and has made it impossible to give any effect to the proviso which allowed the Commission to designate the instances in which the rule of the prohibition might be departed from.

In view of these facts what was probably the intention of Congress in removing that phrase from the statute? It is earnestly contended by the carriers that the only effect was to take from the railway the power of initiative. The carrier can no longer judge in the first instance whether it may disregard the rule of that section, but is compelled to submit that question to the Commission.

Counsel for the Great Northern and Northern Pacific insist that the sole duty of the Commission under the present statute is to determine whether competition exists at the more distant point. If it does, permission to depart from the rule of the section must of necessity be granted; if it does not exist, it must be denied.

To this view we can not subscribe. The effect of the present section is certainly to require carriers to first obtain from the Commission leave to depart from the rule of that section, and that of itself is a most significant and important thing. There is certainly a wide difference between the situation formerly, when some complainant must attack the existing rate and make good by evidence his complaint, and now, when the railroad must assume the burden of its justification. It is a matter of consequence that every discrimination of this sort must be brought directly to the attention of the Commission and passed upon by that body, but we think that something beyond this was in the legislative mind.

The real difficulty before had not been that the existing relation of rates must be attacked by complaint. Many complainants were ready and anxious to initiate such proceedings, and many complainants did initiate such proceedings only to be told that the Commission had no authority to grant relief, even though it were of the opinion that such relief should be granted. It was the manifest intent of Congress not only to provide by the amendment of this section that carriers must become the advancing party in justifying this particular species of discrimination, but also to give to the Commission some effective power to deal with the case when presented. Had the only purpose of Congress been to shift the burden of proof it would have said so, as it did with respect to certain other rate conditions. If the only function of the Commission is to inquire whether competition exists at the more distant point the matter stands, for all practical purposes, exactly where it has stood from the first. Congress certainly meant to go further than this. It meant not merely to declare a wrong, but to provide a remedy.

This brings us to the further inquiry: What is the function and authority of the Commission under the fourth section as amended?

That section provides that no carrier shall charge more for the short than for the long haul unless upon application to the Commission permission to do so is granted by it. If this section were read by itself and were taken at its literal face meaning, the Commission would possess unrestricted power to grant or deny such application. It could permit in one case and refuse in another, according as its fancy might dictate.

So construed, the proviso would probably be void as a delegation of legislative authority. The making of rates is a legislative function. To say whether a carrier shall or shall not be allowed to charge more for the short than for the long haul is virtually the making of rates, and therefore an attribute of the legislature. To invest an administrative body like this Commission with that unrestricted and unguided authority would be to give it legislative power, which can not be done under our federal constitution. It is one thing to authorize such a body to administer the law in accordance with certain rules and standards prescribed by the legislature and an entirely different thing to turn over to it the exercise of the legislative discretion itself.

The statute of Minnesota provided that any railroad company desiring to increase its capital stock should apply to the railroad commission of that state, and that no increase should be made without the consent of that commission. The supreme court of Minnesota held that this statute was unconstitutional as a delegation of legislative authority. *State v. G. N. Ry. Co.*, 100 Minn., 445.

There would seem to be little difference between delegating, without restraint, to a railroad commission authority to determine whether the capital stock of a railway shall or shall not be increased and investing that commission with power to arbitrarily determine whether, in a particular case, the long-and-short-haul rule may be departed from. Of the two, the latter power would rather more clearly involve the exercise of legislative functions.

Counsel for the city of Spokane insists that this proviso is void; that it should be stricken from the section; and that the Commission should treat the section as though it contained no such proviso; in other words, that we should hold that the fourth section imposes an absolute long-and-short-haul rule and should enforce that rule against the carriers.

Where a proviso which is unconstitutional can be separated from the body of the statute the unconstitutional provision will be disregarded and the statute enforced as though it contained no such proviso; but where the proviso is so far an essential part of the statute that it is evident that the legislature would not have enacted the statute itself without the proviso, then the entire statute falls if the proviso is held invalid. *Allen v. Louisiana*, 103 U. S., 80;

Poindexter v. Greenhow, 114 U. S., 207; *Sprague v. Thompson*, 118 U. S., 90; *Pollock v. Farmers Loan & Trust Co.*, 158 U. S., 601.

It may well be claimed that the present case is of that character. To eliminate this proviso leaves the fourth section an absolute long-and-short-haul prohibition. At every point in this discussion Congress has steadfastly declined to adopt such a provision, and it hardly seems probable that the court would give such construction to this amended section as would produce exactly the result which Congress has uniformly declined to accept.

However, we find no occasion to pass upon that question. It is the rule that where a statute is susceptible of two interpretations, under one of which it is constitutional and under the other unconstitutional, that interpretation must be adopted which will save the validity of the act. This familiar rule was very recently applied by the Supreme Court of the United States in the *Commodities Cases*: *case—United States v. Delaware & Hudson Co.*, 213 U. S., 366.

The rule must extend to a proviso as well as to the body of a statute, and if it is possible to put upon this amended section such a construction as will preserve the constitutionality of the entire section, that clearly should be done.

Another thing should be borne in mind in determining the purpose of Congress in amending the fourth section as it did. In the *Alabama Midland case*, *supra*, the Supreme Court said:

Whether there has been an undue or unreasonable prejudice or preference, or whether the circumstances and conditions of the carriage have been substantially similar or otherwise in particular instances, are questions of fact depending on the matters proved in each case.

At that time the findings of this Commission upon questions of fact were only *prima facie* evidence of their correctness. The Commission then possessed no rate-making authority, and all the decisions which have been referred to touching the fourth section were made in that posture of the law.

By the Hepburn amendment the rate-making power was conferred to a certain extent upon this body. To-day our conclusions of fact in administering the first, third, and apparently the second section, are conclusive. *Illinois Central R. R. Co. v. I. C. C.*, 215 U. S., 452; *Delaware, Lackawanna & Western R. R. Co. v. I. C. C.*, 220 U. S., 235.

Bearing in mind the authority which the Commission now administers in prescribing a reasonable rate and in declaring and correcting an undue preference, it seems evident that the purpose of Congress was to commit to this body the duty of determining whether if the carrier was permitted to charge a higher rate at the intermediate point that would result in a violation of the provisions of the act. But in so doing the Commission can not act arbitrarily. It must investigate

each case, and if after such investigation it is of the opinion that a departure from the rule of the fourth section would not result in unreasonable rates or undue discrimination it must permit that departure. If, upon the other hand, it is of the contrary opinion, it must refuse the permission. Such is the only possible construction which can be put upon this section in connection with the entire act, and if any doubt as to the real purpose of Congress could exist, it must be effectively put at rest by an examination of the history of the passage of this measure.

Going back to the time when the original act to regulate commerce was enacted we find two distinct and sharply divergent ideas touching the fourth section. One party in Congress favored an absolute prohibition, the other a qualified prohibition, insisting that there were instances where the rule of the section ought to be departed from. The latter view prevailed at that time, and Congress attempted by the phraseology employed to distinguish those instances where the rule ought not to apply from instances where it should. It is not profitable to refer to the debates themselves as an authority for the above statement, since that has been already done at great length by this Commission in *In re Louisville & Nashville R. R. Co., supra*.

When it became evident that the section as originally enacted was of little or no force in that form and the proposition to amend the section into some effective shape was before Congress, the same difference of view again developed. Some were for an absolute long-and-short-haul section, while others, and apparently the great majority were satisfied that there were cases where carriers should in justice be permitted to make the higher charge at the intermediate point. The problem was to locate these cases. For that purpose it was provided that in every instance where the carrier desired to deviate from the rule of the section it should apply to the Commission, which should investigate and pass upon the propriety of the lower charge at the more distant point; but Congress did not intend to leave this to the mere whim of the Commission any more than it intended to permit arbitrary action where the question is upon the reasonableness of the rate or the undueness of a preference. This is clearly stated by Mr. Mann, chairman of the committee having the bill in charge in the House, who said in explaining the meaning of this section upon the floor:

Remember, whatever the Commission does in respect to this matter, it is always bound by the act of Congress that rates shall be just and reasonable and that railroad companies shall not establish unjust and unreasonable rates, so that practically what we do here is to give the Commission power to say what in a particular case shall be a just and reasonable rate, although we declare as a general proposition that it shall be unjust and unreasonable to charge more for a short haul than for a long haul.

To the same import were the remarks of Senator Sutherland, who, when the conference report containing this proviso was before the Senate, said in answer to the objection that in its present form it was void as a delegation of legislative authority:

When the Interstate Commerce Commission comes to pass upon an application from the railroad companies to be permitted to charge more for the short haul than for the long haul, or less for the long haul than for the short haul, would not the Interstate Commerce Commission itself violate the provisions of section 1 and section 3 that I have read if it did not determine the matter according to the rules laid down in those sections? In other words, must not the Interstate Commerce Commission, in passing upon this question, determine that the rates involved are reasonable, and that as adjusted they do not unjustly or unduly discriminate against any locality? Does not the general language in the law furnish the rule which the Interstate Commerce Commission must adopt in carrying out the provisions of this section?

The question may arise as to what elements the Commission should now take into account in determining whether permission should be granted to deviate from the rule of the fourth section. It was formerly held by the Commission that in applying that section only competition by water and competition with railway lines not subject to the act to regulate commerce could be considered; that all other forms of competition should be disregarded. Is this rule to be still observed?

We think not. The former holding of the Commission was under the section as it then existed and expressed an attempt to so construe the words "circumstances and conditions" as to give some real vitality to that part of the act. The section to-day in its practical application is entirely different and the questions presented for consideration are different. We are considering now not merely whether circumstances at the two points are dissimilar, but whether, on the whole, that dissimilarity justifies a departure from the rule of the section.

Competition of carriers subject to the act has always been a factor with us in determining whether a preference in favor of a given locality is due or undue, and that is substantially the question which must be answered in passing upon an application under the present fourth section.

Strictly speaking, there is no such thing as market competition which is distinct from competition between the lines of transportation serving the market. A market can only compete through the agency which transports for it. The carrier makes a rate from a given market, not out of favor to that locality, but because it desires to obtain traffic which will not otherwise come to it. There would seem, therefore, to be little distinction between the competition of markets and the competition of rival railroads. The whole situation must be considered by us in passing upon these applications.

Such would seem to be the opinion of the Supreme Court, which uses in the *Import Rate case*, 162 U. S., 197, the following language:

That in passing upon questions arising under the act the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment; that among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United States, competition that affects rates should be considered, and in deciding whether rates and charges made at a low rate to secure foreign freights which would otherwise go by other competitive routes are or are not undue and unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered.

The amended section provides, as did the original section, that the Commission may from time to time prescribe the "extent to which such designated common carrier may be relieved from the operation of this section." Congress has evidently had it in mind at all times that cases might arise where carriers should properly be permitted to charge a lower rate at the more distant point, and has intended to arm the Commission with authority to do justice in such instances by permitting a deviation from the rule of the section and prescribing the amount of that deviation. This authority can be exercised by prescribing the maximum difference which may be made against the intermediate point or by fixing a rate at the more distant point below which the carrier must not go, or by defining the territory from which the higher intermediate charge may be made.

We hold that under the amended section it is the duty of the Commission to investigate each application made by a common carrier for leave to depart from the rule of the section. If we are of the opinion, upon a view of the entire situation, that to grant the application will not result in unjust or discriminatory rates and practices, then it should be granted; otherwise it should be denied; and the Commission may, if in its opinion an unlimited departure from the rule of the section ought not to be granted but that a limited departure should be, prescribe in any way that is definite and certain the extent to which the departure may be made. So interpreting the section, we proceed to inquire whether the relief to which the complainants are, in the opinion of the Commission, entitled can in either of the above cases be secured by an order under the fourth section either upon the applications of the carriers for relief under that section or in the cases themselves. And, first, we may consider the case of the city of Spokane.

Spokane is located about 400 miles east of the Pacific Ocean, in the midst of a region rich in agricultural and mineral resources. Between it and the coast lies the Cascade Range of mountains. Spokane is the principal city in Washington east of these mountains and aims to distribute to the territory which surrounds it, in which attempt it meets severe competition from Seattle, Tacoma, and Portland.

Two of the trunk lines of railway serving Spokane both from the east and the west are the Northern Pacific and the Great Northern, the principal defendants in the *Spokane case*. Traffic handled by these carriers from eastern points of origin to Pacific coast cities passes through Spokane and over the Cascade Range. Notwithstanding this, rates to Seattle, Tacoma, and Portland from points as far west as St. Paul and the Missouri River are, for the most part, materially higher to Spokane than to coast towns. Merchandise consumed in territory east of the mountains can be hauled through the city of Spokane, across the mountains, to Seattle, and from Seattle back over the mountains a second time, at a less transportation charge than it can be taken to Spokane and thence distributed to this territory. It is against this relation of rates that Spokane has always protested and now protests. Its complaint is, first of all, against this violation of the fourth section.

Carriers justify this scheme of rate making upon the plea that water competition between the Atlantic and the Pacific coasts fixes the rate from eastern points of origin to the coast cities, and that they, in naming their rates to those points, simply meet the water rate. The fundamental fact upon which their entire defense is bottomed is water competition between the Atlantic and the Pacific coasts, although, to an extent, the additional claim is made that articles of foreign manufacture can be brought in at low water rates, which compete with similar domestic products.

The complainants insisted upon the original hearing, and have renewed the claim at every stage of this proceeding, that there is no active water competition; that the whole claim of water competition is put forward by the defendants as a pretense by which to justify the rank discrimination against interior points. The first inquiry is therefore whether water competition actually exists which has produced and does produce an effect upon rates from the Atlantic seaboard to the Pacific coast, from New York to San Francisco, treating these two cities as illustrative of the localities in which they stand.

This question of fact has been often considered in the past, and with but one unvarying result. The circuit court of the United States has twice found, once in a proceeding concerning these very rates to Spokane, that active water competition does exist which controls

the coast rate. *Farmers' L. & T. Co. v. N. P. Ry. Co.*, 83 Fed. Rep., 249; *I. C. C. v. A., T. & S. F. Ry. Co.*, 50 Fed. Rep., 295.

This Commission has repeatedly found and recognized the same fact. *In re Transcontinental Lines*, 2 I. C. C. Rep., 324; *San Bernardino Board of Trade v. A., T. & S. F. Ry. Co.*, 4 I. C. C. Rep., 104; *Rice v. A., T. & S. F. Ry. Co.*, 4 I. C. C. Rep., 228; *Colorado Fuel & Iron Co. v. S. P. Co.*, 6 I. C. C. Rep., 488; *Kindel v. A., T. & S. F. Ry. Co.*, 8 I. C. C. Rep., 608; *Holdzkom v. M. C. Ry. Co.*, 9 I. C. C. Rep., 42; *Red Cloud Mining Co. v. S. P. Co.*, 9 I. C. C. Rep., 216; *Shippers' Union of Phoenix v. A., T. & S. F. Ry. Co.*, 9 I. C. C. Rep., 250; *Business Men's League of St. L. v. A., T. & S. F. Ry. Co.*, 9 I. C. C. Rep., 318; *Kindel v. B. & A. R. R. Co.*, 11 I. C. C. Rep., 495; *Enterprise Mfg. Co. v. G. R. R. Co.*, 12 I. C. C. Rep., 130; *Merchants Traffic Association v. N. Y., N. H. & H. R. R. Co.*, 13 I. C. C. Rep., 225; *Burgess v. Transcontinental Freight Bureau*, 13 I. C. C. Rep., 668; *Merle Co. v. N. Y. C. & H. R. R. Co.*, 17 I. C. C. Rep., 475; *Fuller & Co. v. P., C. & Y. Ry. Co.*, 17 I. C. C. Rep., 594; *Kentucky Wagon Mfg. Co. v. I. O. R. R. Co.*, 18 I. C. C. Rep., 360; *Receivers' & Shippers' Association of Cin. v. C., N. O. & T. P. Ry. Co.*, 18 I. C. C. Rep., 440; *Nevada R. R. Com. v. S. P. Co.*, 19 I. C. C. Rep., 238; *Harbor City Wholesale Co. of San Pedro v. S. P. Co.*, 19 I. C. C. Rep., 323.

In the original hearing of the *Spokane* case we reexamined that whole question and reaffirmed our decision. *City of Spokane v. Northern Pacific Ry. Co.*, 15 I. C. C. Rep., 376.

In the recent hearing upon the applications of transcontinental lines for leave to disregard the rule of the fourth section evidence has again been produced upon this subject which conclusively shows that the previous finding of the Commission is right. We had before us in the *Spokane* case the manifests of two ships from New York to San Francisco, and in the last hearing we had the manifests of two other ships. They showed in detail the articles transported, the point where they originated, the destination for which they were intended, and the rate under which they moved. These actual transactions prove more conclusively than any mere statement that almost every article which is the subject of ordinary commerce between the coasts can and does move from New York to San Francisco by water at rates materially lower than those maintained by the defendants by rail. We have used San Francisco as the destination port upon the Pacific coast, and in some instances rates from New York to San Francisco are a trifle lower than to other coast cities, but, generally speaking, the San Francisco rate is maintained at Los Angeles, Portland, Seattle, Tacoma, and other points upon the coast.

Passing for the time being the extent and effect of this competition at interior points it must be found as a fact that there is real and

active water competition between New York and San Francisco, between the Atlantic and the Pacific coasts, which does limit the rate of transportation which can be charged by rail between those points upon nearly every article which moves by rail.

It is said that the amount of the movement by water is so insignificant that it should be disregarded. The amount is not insignificant. If reference be had to the traffic which actually originates upon the Atlantic seaboard a considerable percentage moves by water, but the significant thing is not the amount of the movement, but the ever-present possibility of that movement. As was said by the Supreme Court in the *Alabama Midland case*, speaking of the effect produced upon rail rates to Montgomery by the Alabama River:

* * * When the rates to Montgomery were higher a few years ago than now, actual, active water-line competition by the river came in, and the rates were reduced to the level of the lowest practicable paying water rates, and the volume of carriage by the river is now comparatively small; but the controlling power of that water line remains in full force, and must ever remain in force as long as the river remains navigable to its present capacity.

So here the ocean is ever present. The possibility of using it as an avenue of transportation is ever open, and the fact that it will be used, if for any considerable length of time the defendants maintain rates which are so high, or so adjusted as to render it profitable for shippers to resort to that means of transportation, is never doubtful.

The carriers have met this competitive situation by establishing from the Atlantic seaboard to Pacific coast ports a series of commodity rates. Their class rates may be disregarded, since no traffic actually moves under them, the business being handled under some 1,300 commodity items, said to be so adjusted as to best meet this water competitive situation.

These rates to Pacific coast terminals are made applicable not only from the Atlantic seaboard where water competition exists, but from territory as far west as the Missouri River and even Colorado; that is, the same rate to Pacific coast terminals is made from Colorado common points and all territory east, thus creating a blanket some 2,000 miles in width.

Upon the west there is no blanketed territory. Rates to interior points are usually constructed by adding the local rate from the terminal to the interior. This is not so in all cases. It was said, for example, that rates from the east to Spokane were higher than the coast rate by about 75 per cent of the local back. In all cases, however, the rate from all this blanketed territory to the interior point is very much higher than to the more distant coast point.

Now, assuming that there is actual water competition which these defendants may meet, is there anything in this scheme of trans-continental rate making of which Spokane can legitimately com-

plain? The question is not whether rates from the Missouri River or from other eastern points of origin to Spokane are excessive. That question has been considered and passed upon by the Commission. We are now inquiring whether the system upon which these rates are constructed is unlawful, and whether any substantial relief should be or can be given by an order under the fourth section.

The complainants contend in the first place that the terminal rates are themselves sufficiently high and that intermediate rates for a less service ought not to be higher. If the assumption of fact involved in this contention is correct the conclusion must follow. Without inquiring what the law may have been when it was only necessary to show the existence of dissimilar circumstances and conditions at the more distant point, it is clear to us that to-day competition at that point can not be relied upon as a justification for the higher intermediate rate, unless the effect has been to reduce, below what it would otherwise be, the long-distance charge. It would be the rankest discrimination to allow these carriers to make a higher charge at the intermediate point for the shorter haul unless they were compelled by some cause beyond their control to accept at the long-distant point less than a reasonable compensation for the service.

Upon the question of fact the Commission is concluded by its previous findings in this case. As already stated there are in effect to-day some 1,300 commodity rates from eastern destinations to north Pacific coast terminals, and we have suggested as reasonable a schedule of about 550 rates from the same points of origin in the east to Spokane. These 550 items move the bulk of the traffic both to the coast and to Spokane. The rates found reasonable by us from St. Paul to Spokane are substantially the same as those from St. Paul to Seattle, but from territory east of St. Paul they are higher, depending upon the distance. Our rates from Chicago to Spokane are about 10 per cent higher than the present coast rates from the same point.

If therefore the fourth section were to be applied, having reference to this contention of the complainants alone, we must hold that from the Missouri River and corresponding territory no higher rate should be charged to Spokane and Spokane territory than to the coast, but that from Chicago and territory east of the Missouri River generally a higher intermediate charge might be made.

The next contention of the complainants is that even though there be water competition between the Atlantic seaboard and the Pacific coast and even though the force of that competition does dictate the rate between those points, nevertheless there is no such competition from the interior, as, for example, from Chicago, and that therefore while the defendants may properly charge a higher rate from

New York to Spokane than the corresponding rate to Seattle, they can not properly maintain this discrimination when the point of origin is Chicago.

In this discussion New York, which is the principal port of departure upon the Atlantic seaboard, and San Francisco, which is the largest and most important port upon the Pacific coast, may be treated as synonymous with the coast territory itself. It is evident that traffic in New York can move the entire distance to San Francisco by water, and that therefore water competition may and does control the rate between those points. If, now, traffic is at some interior point, like Chicago, it can only take this water route by being carried from the interior point to New York by rail. The total cost of the carriage from the interior point to San Francisco would be made up of the cost to New York and that from New York. It would follow that as the distance from the Atlantic coast increases the cost of carriage by water also increases and the direct effect of water competition decreases. If, therefore, rates were so adjusted as to simply meet and fully meet water competition the rail rate from New York to San Francisco would be lower than that from Chicago by the amount of the rate from Chicago to New York.

If, for example, the water rate on a given article from New York to San Francisco is 50 cents, and this forces a rail rate between those points of 60 cents, and if the rail rate from Chicago to New York is 25 cents, then the rate from Chicago to San Francisco would be 85 cents. Spokane contends that since the rate from Chicago is the same and sometimes even lower than from New York it must follow that it is due to some other cause than water competition.

This would not of necessity follow for the reason that the carrier might see fit to fully meet the water competition at Chicago while declining to meet it at New York. In a case recently considered by the Commission involving the right to make higher charges at intermediate points than at the long distance point between New York and Charleston, S. C., it appeared that while the rail rate to Charleston was much lower than to interior intermediate points only a small per cent of the total traffic to Charleston was handled by rail, while at interior points the higher rail rates were sufficiently low to take all the business. So in this case the carriers might deem it good policy to establish rates from interior territory which would carry the traffic as against the water and to the entire exclusion of the water, although it would not be policy to attempt to make such rates at the seaboard.

The testimony in this and other cases indicates that the principal movement by water is from the Atlantic seaboard itself, from New York and from points having water communication with New York,

and from interior territory immediately contiguous. There is a considerable movement as far inland as Buffalo and Pittsburg, and an occasional movement from Detroit, Chicago, and similar points. A movement of starch from Cedar Rapids, Iowa, of considerable proportions was shown, but, generally speaking, up to the present time comparatively little traffic originating west of the Buffalo-Pittsburg zone has reached the Pacific coast by water.

In this connection it should be observed that in the past water competition has been by various devices upon the part of rail carriers restrained and subdued.

At the outset the special contract system was devised, under which large rebates from the going rate were paid to those shippers who exclusively patronized the rail lines. By this scheme the ships were soon robbed of the bulk of their traffic.

When this expedient would no longer be tolerated transcontinental railroads subsidized the Panama line, which had become the active water competitor, by purchasing a considerable part of the total available space in the boats of that line from New York, and thus controlling the rates by that route. This was continued for years.

Since the advent of the American-Hawaiian line there has been, not perhaps a definite agreement between it and the rail lines, but a general understanding that such rates should be maintained by water as compared with rates by rail as would give to the vessels a reasonable amount of traffic from the immediate vicinity of New York.

Of more importance than all the rest have been the extremely harmonious relations generally existing between shippers and rail carriers upon the Pacific coast. Those shippers most interested in transcontinental rates have been the jobbers of San Francisco and other coast-terminal cities. The only desire of those shippers has been that rates should be so adjusted as would enable them to transact business against interior cities. So long as this relation of rates has existed the jobber has been willing to pay both a high rate to San Francisco and a high rate from San Francisco. In consideration that this relation should be maintained the shipper upon the coast has found it for his interest to patronize largely the rail carrier without inquiring too closely what rates were available by water.

Competition at the present time seems to be more active. An independent line has been established upon the Pacific coast. The Panama Railroad has become an actual competitor for this business. The American-Hawaiian line, finding competitors in the field, has been compelled to reduce its charges. Testimony recently given before the Commission showed that a line of steamers had been put on from New Orleans which was actually handling consignments of lumber from New Orleans to San Francisco for 45 cents per 100 pounds and that

shipments of lumber were moving from Memphis to San Francisco at 55 cents per 100 pounds, as against the present transcontinental rate of 75 cents.

Everything indicates that the effect of this water competition will increase rather than diminish from now until the completion of the Panama Canal and when that waterway is open for business both rate and facility will be very much better than to-day.

It is true, however, that carriers maintain the same transcontinental rate from Chicago as from New York, not by reason of the direct effect, but rather as an indirect result of water competition. The reason for this will be best understood by an actual illustration. Assume that a building requiring the use of a large amount of structural steel is to be erected in San Francisco. That steel is manufactured both at the seaboard and in Chicago. That which is made at the seaboard can be taken by water from the point of origin to the point of destination, and the rate at which it can move is therefore determined by water competition.

The cost of producing steel is the same at both points. In order, therefore, that the producers may stand an equal chance in competing for this business it is necessary that the rate from both points should be the same, and the business can not move from Chicago unless the rate from that point is as low as from the seaboard.

The Atchison, Topeka & Santa Fe Railway begins at Chicago. If this steel is bought at Chicago and moves by that line, the entire freight money is retained by it; if, upon the other hand, the steel is bought at New York, moved by some line to Chicago, and there delivered to the Santa Fe, that line only receives a part of the through charge. The service performed by it is the same in either case, but the amount of its compensation is larger when the freight originates at Chicago. It is therefore for the interest of that line to name a rate from Chicago which will originate the business at that point instead of allowing it to originate upon the seaboard. The interest of the line from New York to Chicago is that the business should be taken up at New York, and as a compromise it is finally agreed to apply the same rate from both these points. This clearly shows how water competition, if it does not actually extend to the interior point, may and does dictate the rate from that point.

What would be true of the steel entering into the construction of this building is true also of almost every article of commerce which moves between the east and the west. The middle west to-day manufactures nearly everything which is produced upon the Atlantic seaboard, and the effect of this policy of the railroads has been to make the middle west the almost exclusive market of origin for the intermountain country and largely for the Pacific coast itself. This com-

petition is strictly that of carriers, although sometimes termed "market" competition.

There is in this same connection market competition proper. Chicago, with all its political and financial strength, demands that it shall be accorded the same right to sell in San Francisco which its rival New York has. Its argument is this: If this traffic moves by rail from New York it passes through Chicago, and is hauled 1,000 miles farther than as though it originated at Chicago. If it originates at Chicago there is eliminated from the service the useless waste of energy involved in transporting the business for the first 1,000 miles. Therefore, if this traffic is to move by rail such a rate should be made as will move it from Chicago and not from New York.

And why is not this argument a sound one, at least if reference be had entirely to eastern territory? It is for the interest of Chicago that it be allowed to sell in San Francisco; it is in the interest of San Francisco that it be allowed to buy in both Chicago and New York. It is in the interest of the carriers, considered as a whole, that the business originate at the nearer point and that is the just interest of the public to the end that useless waste be avoided. New York and the lines leading from New York to Chicago alone suffer.

Considering this question broadly and in all its aspects we can not say that the legitimate effect of water competition upon the Atlantic seaboard may not be to reduce the rail rate from interior points.

The third claim of the complainants is that while the defendants recognize upon the Atlantic seaboard the force of competition in its various forms, hereinbefore stated, they decline to do so upon the Pacific coast. While they extend the New York rate to Chicago and the Missouri River they decline to extend the Seattle rate to Spokane although every reason which justifies that in the former case requires it in the latter. Just as traffic can be and occasionally is carried by rail from Chicago to New York and thence by water to San Francisco, so is traffic at times and indeed much more frequently handled from New York to Seattle by water and from Seattle to Spokane by rail. If the application of the transcontinental rate from Chicago is necessary to prevent the movement by water from Chicago through New York, all the more is the application of that rate from New York to Spokane necessary to prevent the movement of traffic from New York to Seattle and from Seattle to Spokane.

Spokane is a great distributing center and aims to be a greater one. It demands the right to rates which will enable it to bring from the east and distribute into territory lying east of the Cascade Range. Such traffic, when distributed from Spokane, is hauled a less distance by 400 miles than when distributed from Seattle, and the distribution haul itself is also much less expensive. It is a manifest economic waste to haul traffic over the Cascade Mountains and back again.

The interest of the carrier and the public as much require that this business should stop at Spokane instead of going on to Seattle as that it should originate in the middle west instead of upon the Atlantic seaboard.

Spokane insists that if these defendants give to Seattle the right to buy in both New York and Chicago, when its location entitles it to buy in New York alone, they should give to Spokane, which is nearer by 400 miles, the right to buy in both New York and Chicago. New York urges that if Chicago is given an opportunity to sell in Seattle then New York shall be given the opportunity to sell in Spokane. In other words the same blanket rate which is applied on the east should be applied upon the west.

The carriers insist that they may determine as a matter of policy whether they will meet this water competition, and in what manner and at what points; and this is true so far as that is a matter of policy. To a disinterested observer it would seem to be in the true interest of these transcontinental lines, which begin at the Missouri River, to make rates which would build up interior points as against the coast. The haul to these points is shorter and less expensive. The distribution from these points is easier, but, above all, the traffic which is created at such a point belongs to the rail line which creates it, while the traffic which is fostered upon the coast is the prey of every vessel which sails the sea. Carriers in the future will doubtless adopt this method and will voluntarily make rates to interior points like Spokane which will enable those localities to compete with coast cities.

Admitting, however, that it is for these defendants to say to what extent if at all they will meet these competitive conditions, they are not at liberty, in meeting them, to adopt such a policy, nor to execute the policy adopted in such a manner as to unjustly discriminate between different localities.

They may perhaps determine whether they will apply the coast rate, which is fixed by water competition, at the interior point, but if they apply it at one point they must apply it at others which are similarly situated; they can not, in the absence of some sufficient reason, give Chicago that rate and refuse it to St. Louis and Kansas City. They can not so adjust their whole tariff scheme, upon the plea of water competition, as to concentrate in these coast cities commercial and transportation advantages to which their mere location does not entitle them, and that in substance is the effect of the present rate adjustment.

For the purpose of disposing of this matter by an order under the fourth section we have divided the United States into five territorial zones, as follows:

(The transcontinental groups hereinafter described are as specified in R. H. Countiss, agent's, transcontinental tariff I. C. C. No. 929.)

Zone No. 1 comprises all that portion of the United States lying west of a line called line No. 1, which extends in a general southerly direction from a point immediately east of Grand Portage, Minn.; thence southwesterly, along the northwestern shore of Lake Superior, to a point immediately east of Superior, Wis.; thence southerly, along the eastern boundary of transcontinental group F, to the intersection of the Arkansas and Oklahoma state line; thence along the west side of the Kansas City Southern Railway to the Gulf of Mexico.

Zone No. 2 embraces all territory in the United States lying east of line No. 1 and west of a line called line No. 2, which begins at the international boundary between the United States and Canada, immediately west of Cockburn Island, in Lake Huron; passes westerly through the Straits of Mackinaw; southerly, through Lake Michigan to its southern boundary; follows the west boundary of transcontinental group C to Paducah, Ky.; thence follows the east side of the Illinois Central Railroad to the southern boundary of transcontinental group C; thence follows the east boundary of group C to the Gulf of Mexico.

Zone No. 3 embraces all territory in the United States lying east of line No. 2 and north of the south boundary of transcontinental group C and west of line No. 3, which is the Buffalo-Pittsburg line from Buffalo, N. Y., to Wheeling, W. Va.; thence follows the Ohio River to Huntington, W. Va.

Zone No. 4 embraces all territory in the United States east of line No. 3 and north of the south boundary of transcontinental group C.

Zone No. 5 embraces all territory south and east of transcontinental group C.

Looking at this whole situation and endeavoring to justly consider the interests of all parties affected, including the carriers, we are of the opinion that from zone 1 no higher charge can justly be made at any intermediate point than to a more distant point. The eastern limit of this territory is approximately 1,500 miles from the Atlantic seaboard, almost midway between the Pacific and Atlantic oceans. No traffic has ever been, and none probably ever will be transported from this section to the Atlantic coast and thence by water to the Pacific coast. Giving full weight to the effect of competition of all kinds, we can find no justification for a system of rates which maintains from this territory a higher charge to any interior point than is made to the coast.

With respect to territory embraced in zone 2 the case stands somewhat different. This zone comprises the Mississippi Valley and a considerable portion of the great manufacturing area of the west. It lies 400 miles nearer the Atlantic seaboard, with which it is connected in part at least by lines of railroad affording the cheapest

transportation service in any part of the country. Still there never has been and there probably never will be in the future any considerable movement of traffic from this territory to the Pacific coast by way of the Atlantic seaboard.

We are of the opinion that rates from this territory to intermediate points may properly exceed by not more than 7 per cent rates from the same points of origin to Pacific coast terminals.

From zone 3 there is still greater possibility of actual transportation competition on business destined to Pacific coast points, although from this section hitherto the actual movement has been only occasional.

We are of the opinion that from points of origin in this territory rates to intermediate points may properly exceed those to terminal points by not more than 15 per cent.

In the past the actual movement from eastern points of origin to Pacific coast terminals has been mainly confined to zone 4, and even in this zone the greater part of the traffic has originated in or near the seaboard itself.

The force of water competition is greatest at New York and gradually diminishes as the distance from New York increases, but we are of the opinion that this entire territory may properly be treated as a single group, and that rates from points of origin within its limits to intermediate points may properly exceed those to terminal points by not more than 25 per cent.

No opinion is expressed at this time as to zone 5, since rates from that territory are not involved in these proceedings.

An order will be entered, effective November 15, denying the application of the carriers, except that the charging of higher intermediate rates will be permitted in accordance with the above findings.

A similar order will be entered in No. 879 against the defendants in that case with respect to the territory involved.

The statute does not in terms define the proceeding in which the Commission may inquire into alleged violations of the fourth section and grant the relief as specified in the proviso, but it is clear that any order which the Commission makes in that respect must be at all times subject to modification by it, and it seems equally clear that when complaint is made of a violation of the fourth section the Commission may, by order in that proceeding, grant appropriate relief against any violation of the act which is found to exist, including a violation of the fourth section, nor is it significant that the complaint was pending at the time of the amendment of the section.

It should also be noted that this is not a new and additional authority, but is simply the exercise of the jurisdiction provided for

in the fifteenth section for the correction of unjust discrimination. There is no essential difference between this order and an order which the Commission might make under the third section.

We do not think that any further order should be made for the present in this case. It may be asked why the schedule of rates suggested by the Commission as reasonable should not be ordered in. The answer is that carriers should be permitted in so far as possible to adjust their own tariffs and that it seems probable that in compliance with this order carriers must establish rates in substantial accord with those suggested by us. It should be ever borne in mind that the acute complaint in this case is the discrimination and not the unreasonable rate. Obedience to this order will doubtless result in some rates from the east which are higher and in others which are lower than those suggested by the Commission since we did not then feel at liberty, as the complainants requested, to make the Spokane rate depend upon the coast rate. But it is likely that the resulting schedule will be more satisfactory to the complainants and no more burdensome upon the defendants. If the carriers establish under this disposition of the case rates to Spokane which are excessive, a further order can be made in this proceeding reducing them to a proper basis.

We do not think that this order will give to the complainants the relief in No. 2662 to which they have been found entitled. The complaint in that case referred to rates between Utah common points upon the west, and the Missouri River, the Mississippi River, and Chicago upon the east. The rates which we have found reasonable from Chicago are substantially the same as the present transcontinental rates. In only a very few instances do they exceed those rates. All rates from the Mississippi River and the Missouri River, with possibly two or three exceptions, are materially less than the present transcontinental rates. Notwithstanding this order, carriers might still leave in effect from all the points involved rates materially higher than those approved by us. An order will therefore be entered in the *Salt Lake case*, No. 2662, effective November 15, 1911, establishing the schedule of rates found to be reasonable by the Commission in its opinion of June 7, 1910.

BEFORE THE

Interstate Commerce Commission.

LONG AND SHORT HAUL DOCKET No. 1243.

IN THE MATTER OF THE APPLICATION OF SOUTHERN
PACIFIC COMPANY FOR RELIEF UNDER THE PRO-
VISIONS OF THE FOURTH SECTION WITH RESPECT
TO TRAFFIC MOVING BETWEEN PORTLAND AND SAN
FRANCISCO AND OTHER SAN FRANCISCO BAY
POINTS.

Decided February 5, 1912.

REPORT OF THE COMMISSION.

LONG AND SHORT HAUL DOCKET No. 1243.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR RELIEF UNDER THE PROVISIONS OF THE FOURTH SECTION WITH RESPECT TO TRAFFIC MOVING BETWEEN PORTLAND AND SAN FRANCISCO AND OTHER SAN FRANCISCO BAY POINTS.

Submitted January 16, 1912. Decided February 5, 1912.

1. The Southern Pacific Company petitions for authority to continue all rates in its local tariff No. 161, which contains class rates for the transportation of traffic from San Francisco, Sacramento, and Marysville, Cal., and points grouped therewith, to Portland, Oreg., and intermediate points; and also rates from Portland to San Francisco, Sacramento, Marysville, and points grouped therewith, as well as rates from points south of Portland in Oregon to stations designated in California; but in view of the condition shown in the record, the Commission finds that defendant has not justified the rate situation presented in its tariff in these respects: (a) The application of the same rates from other points upon San Francisco Bay and points inland to Portland as are extended from San Francisco; (b) the application of higher rates southbound from Portland to points inland than to San Francisco; (c) the application of higher rates to points on the Willamette River on traffic northbound from San Francisco than are applied on traffic southbound from Portland to points on the Sacramento River; (d) the application of rates from San Francisco that are higher to points between San Francisco and Portland than the combination of locals on Portland; and (e) the application of unreasonably higher rates at intermediate points.
2. It appears that the San Francisco-Portland rates are forced by water competition, and that they are in part at least less than normal, fair, and reasonable rates.
3. Contention of defendant that it is neither the duty of this Commission, nor was it contemplated by Congress, that the Commission should give consideration to intermediate rates, where justification was shown by the existence of water competition at the more distant point for lower rates than to the nearer points, not sustained.
4. A railroad is justified under the law in discriminating in favor of one city as against another if they are so differently circumstanced that at one point transportation forces are brought into play which are not or can not be exercised at another point; but a carrier is not justified in deliberately

adopting a policy of preference toward one city as against another. Only the preference or advantage that is due is justifiable, and that advantage which is bestowed upon a city by the mere policy of the carrier and not by reason of actual difference in condition is undue.

5. Instead of denying the application of defendant, the Commission gives permission for it to make a further show under its application in accordance with the views herein expressed, the requirements of the law.

Henry Thurtell for Interstate Commerce Commission.

Edward M. Cousin for Willamette Valley shippers, interveners.

Frank H. McCune for Medford Traffic Bureau, and *T. Jones Company*, interveners.

William R. Wheeler and *Seth Mann* for Traffic Bureau of Merchants' Exchange of San Francisco, intervener.

F. O. Dillard, *W. F. Herrin*, *H. A. Scandrett*, *O. W. Durbrow*, *W. W. Cotten*, and *O. B. Squires* for Southern Pacific Company.

REPORT OF THE COMMISSION.

LANE, Commissioner:

In this application the Southern Pacific Company petitions this Commission for authority to continue all rates shown in Southern Pacific Company's local freight tariff No. 161, I. C. C. No. 3021, from and to the points named. Some of these rates are lower to more distant points than to intermediate points, and are also lower from more distant points than from intermediate points. This tariff contains class rates for the transportation of traffic from San Francisco, Sacramento, and Marysville, Cal., and points grouped therewith, to Portland and to intermediate points in Oregon. The tariff also contains rates from Portland to San Francisco, Sacramento, Marysville, and points grouped therewith, as well as rates from points south of Portland in Oregon to the stations designated in California.

Hearing was first had upon this matter in Washington, at which time counsel appeared for the carrier, and protest was made by Willamette Valley shippers against granting the relief asked for. At this hearing it developed that the carrier was unprepared to justify the discrimination existing between its rates to the more distant points and to intermediate points. Thereupon an adjournment was had and testimony taken at Pacific coast cities.

In this case the attorney for the Willamette Valley shippers makes the following protest against the granting of any permission upon the testimony which the carrier has offered:

The carriers have proceeded to deliberately disregard the purpose of the amended fourth section by filing applications to continue the very rates and all the abuses that the law was designed to correct. How can the authority of

the Commission be invoked to relieve the carrier of the operation of the provision in *special cases* when no special cases have been presented? The Commission can not act in *general* nor in all cases, but only in *special cases*. That the purpose of Congress was to disapprove and create a change in the back-haul principle of constructing rates can not be gainsaid. The general principle and the attendant discrimination and abuses present in the typical case under consideration now are ordered abolished; but "in order not to unduly disturb existing conditions in an abrupt manner," the carriers were afforded ample opportunity to voluntarily comply with the general principles of the law, after which the Commission might be appealed to for relief in *special cases*.

Have the carriers made an earnest and faithful effort to sift the inconsistencies and discriminations out of these California-Oregon rates? Is not their action in burdening this Commission with the readjustment of every single rate between California and Oregon an affront to the law and an imposition on the Commission? There are no special cases here, and the Commission can not act otherwise than to deny general applications. Was this result designed and forecasted for the purpose of subsequently making an attempt, as has been done in other cases, at meeting the law's requirements by advances in rates? Certainly the defeat of wise regulation of railroad rates by such methods can not be countenanced.

Contrary to the understanding had with the Commission at the original hearing, this case has been presented on the part of the Southern Pacific Company upon the theory that the Commission should not concern itself with the extent of the discrimination obtaining between intermediate points and terminals or with the adjustment between the various cities concerned. Were it not for the gravity of the situation the Commission would be entirely justified in declining to grant the application of the carrier. Acting, however, upon public grounds, we shall proceed to give consideration to the matters presented.

CONTRAST BETWEEN TERMINAL AND INTERMEDIATE RATES.

The first class rate from San Francisco to Portland by rail, a distance of 746 miles, is 51 cents per 100 pounds.

The first class rate from San Francisco to Talent, Oreg., a distance of 409 miles, is \$1.66 per 100 pounds.

The first class rate from Sacramento, a point 90 miles north of San Francisco and connected with San Francisco by water, to Portland, is 51 cents per 100 pounds, while the same rate to Talent, 346 miles, is \$1.57 per 100 pounds.

Marysville is a point near the Sacramento River 52 miles north of Sacramento, to which the Southern Pacific Company extends trans-continental terminal rates. The first class rate from Marysville to Portland, 630 miles, is 70 cents, while the first class rate from Marysville to Talent, 294 miles, is \$1.46 per 100 pounds. The accompanying map and table show the situation.



Rates shown in Southern Pacific local and joint rate tariff No. 161, I. C. C. No. 3021, with distances.

Rates in cents per 100 pounds.

	Distance.	First class rate.
	Miles.	Cents.
From San Francisco to—		
Portland, Oreg.	746	51
Oregon City, Oreg.	730	50
Salem, Oreg.	683	70
Albany, Oreg.	696	73
Eugene, Oreg.	622	91
Roseburg, Oreg.	547	117
Medford, Oreg.	416	153
Talent, Oreg.	400	168
Ashland, Oreg.	404	163
Cole, Cal.	377	136
Weed, Cal.	323	120
Redding, Cal.	233	87
Red Bluff, Cal.	196	69
Marysville, Cal.	134	39
Sacramento	89	
Interstate rate.		34
Intrastate rate.		23
From Sacramento to—		
Portland, Oreg.	682	51
Oregon City, Oreg.	667	50
Salem, Oreg.	629	70
Albany, Oreg.	622	73
Eugene, Oreg.	559	117
Roseburg, Oreg.	483	151
Medford, Oreg.	353	159
Talent, Oreg.	346	157
Ashland, Oreg.	340	154
Cole, Cal.	314	127
Weed, Cal.	300	110
Redding, Cal.	190	71
Red Bluff, Cal.	135	34
Marysville, Cal.	82	21
From Marysville to—		
Portland, Oreg.	630	70
Oregon City, Oreg.	615	84
Salem, Oreg.	577	91
Albany, Oreg.	550	94
Eugene, Oreg.	507	113
Roseburg, Oreg.	432	138
Medford, Oreg.	301	145
Talent, Oreg.	294	145
Ashland, Oreg.	288	143
Cole, Cal.	262	115
Weed, Cal.	208	99
Redding, Cal.	117	61
Red Bluff, Cal.	83	44
From Portland to—		
San Francisco, Cal.	746	51
Sacramento, Cal.	632	60
Marysville, Cal.	630	70
From Salem to—		
San Francisco, Cal.	683	70
Sacramento, Cal.	629	65
Marysville, Cal.	577	96
From Albany to—		
San Francisco, Cal.	696	73
Sacramento, Cal.	622	58
Marysville, Cal.	550	96
From Medford to—		
San Francisco, Cal.	416	153
Sacramento, Cal.	353	159
Marysville, Cal.	301	145

Talent is the point on the line northbound that takes the highest rate, but Ashland and Medford, Oreg., are cities of greater importance in southern Oregon. The rates to these points are contrasted hereunder:

From San Francisco to Ashland (404 miles):

Class....	1	2	3	4	5	A	B	C	D	E
Rate.....	163	142	134	128	107	99	82	59	51	48

From Sacramento to Ashland (340 miles):

Class....	1	2	3	4	5	A	B	C	D	E
Rate.....	154	141	127	117	104½	99	72½	53½	45½	45½

From Marysville to Ashland (288 miles):

Class....	1	2	3	4	5	A	B	C	D	E
Rate.....	143	130	116	106	97	97	63½	46	39	39

From San Francisco to Medford (416 miles):

Class....	1	2	3	4	5	A	B	C	D	E
Rate.....	163	138	130	123	104	96	81	58½	50½	47

From Sacramento to Medford (353 miles):

Class....	1	2	3	4	5	A	B	C	D	E
Rate.....	159	138	130	121	104	96	75½	54½	46½	46½

From Marysville to Medford (301 miles):

Class....	1	2	3	4	5	A	B	C	D	E
Rate.....	148	134	121	110	101	101	66½	47	40	40

For the long haul from San Francisco to Portland the Southern Pacific charges less than one-third of the rate which it imposes upon an interior city, little more than half of the San Francisco-Portland distance. From Sacramento (to which Portland has water communication by way of San Francisco Bay and the Sacramento River, when freight is transferred at San Francisco) the rate to Portland is less than one-third of the rate from Sacramento to a point just one-half as far.

WATER COMPETITION.

Disregarding almost entirely the wide spread between its Portland and intermediate rates, the Southern Pacific Company sought to justify its violation of the prohibition of the fourth section by establishing the fact that it was called upon to meet water competition in its haul between San Francisco and Portland. This contention is fairly established. It had at its command the volume of freight moved from San Francisco to Portland by the San Francisco & Portland Steamship Company. From this company's statement it would appear that the water tonnage from the different points around San Francisco Bay to Portland, for the year ending June 30, 1911, amounted to 77,584 tons, while the amount carried by

rail was 21,027 tons, showing that this one boat company secured nearly four times as much traffic as did the only rail line which operated between these two points. It was asserted that there were several boat lines competing for this business, but the volume of their traffic was not shown. It is, however, clear, from the statements submitted, that the Southern Pacific Company secured for rail carriage from San Francisco and neighboring points, to Portland, but a small percentage of the San Francisco-Portland traffic. It was shown, too, that of the freight that moved by rail from Portland to Sacramento, Marysville, and to points on San Francisco Bay the total tonnage was about 13,332 tons, while the San Francisco & Portland Steamship Company alone hauled 93,193 tons.

The suggestion was made, in an effort to establish the bona fides of this water competition, that the water rates from San Francisco to Portland were lower than for similar distances on the Atlantic Ocean. It appeared that the water rates between San Francisco and Portland were approximately, for the first four classes, 35 cents, and for the remaining six, 25 cents. The distance in nautical miles that the steamships traveled between San Francisco and Portland is 651 miles. These rates were compared with the water rates between New York and Charleston, a distance of 626 miles, which, under southern classification, were stated to be on a 57-cent scale. The rates were also compared with water rates between Philadelphia and Savannah, 609 nautical miles, which appear to be the same as from New York to Charleston. From Baltimore to Savannah, 545 nautical miles, we again find the rates the same as from New York to Charleston and from Philadelphia to Savannah. This comparison shows that while the first, second, and third classes in southern classification moved on higher rates from New York to Charleston than did the first, second, and third classes under western classification from San Francisco to Portland, that the average of the 12 classes in southern classification is but 28 cents per 100 pounds between New York and Charleston, while for the 10 classes in western classification the average is 29 cents per 100 pounds from San Francisco to Portland. In so far as these figures were introduced for the purpose of showing that the water rates on the Pacific coast were extremely low, even for water rates, the contention is not sustained. It is not to be expected, moreover, that the large tonnage by water, moving between the ports, is ultimately destined to Portland. Much of it is destined to points north, east, and south of Portland, and inasmuch as the Southern Pacific Company receives the back haul into southern Oregon by rail, on that portion of the traffic which goes into that territory, and likewise may receive the haul both north and east, the existence of a not unfriendly water carrier has advantages to a railroad.

The effect of water transportation upon these rail rates may be inferred from their history, which is shown by the following table:

Statement showing class rates effective from 1890 to date, between San Francisco, Cal., and Portland, Oreg., via the Southern Pacific.

Rates in cents per 100 pounds, except as otherwise shown.

Effective date—Inclusive.	Class.										
	1	2	3	4	5	A	B	C	D	E	
January 1, 1890, to August 4, 1890.....	Clz.	Clz.	Clz.	Clz.	Clz.	Clz.	Clz.	Clz.	Clz.	Clz.	
August 7, 1890, to July 9, 1894.....	200	170	150	130	110	110	85	77	65	58	
July 10, 1894, to July 31, 1895.....	120	112	91	75	65	57	48	43	37	32	
October 20, 1895, to July 31, 1897.....	100	90	85	75	65	57	45	40	35	30	
August 1, 1896, to October 18, 1896.....	40	40	40	35	30	30	25	25	20	20	
October 20, 1896, to July 31, 1897.....	56	51	49	46	43	41	35	30	26	22	
August 1, 1897, to January 22, 1898.....	80	40	30	25	17½	22½	22½	17½	17½	17½	
January 23, 1898, to September 25, 1901.....	51	41	31	26	15	23	23	18	18	18	
September 26, 1901, to July 14, 1906.....	51	41	35	31	18	23	23	18	18	18	
July 15, 1905, to June 30, 1906.....	51	41	41	41	28	28	28	28	28	28	
July 1, 1906, to present date.....	51	41	41	41	28	28	500	500	500	500	

¹ In cents per ton of 2,000 pounds.

These rates are extremely low as compared with rates over like distances elsewhere; yet they are not quite as low as would be indicated by the first class rate, for they make an average of 34.2 cents per 100 pounds, which corresponds with a scale of rates beginning with 65 cents for first class, if we maintain the same relation between classes as now generally obtains in the Pacific northwest.

There is no other conclusion to reach but that the San Francisco-Portland rates are forced by water competition; that they are in part at least less than normal, fair, and reasonable rates.

INTERMEDIATE RATES.

There has, however, been no sufficient justification shown for the wide spread which exists between the Portland rates and those to intermediate points.

It is urged by the carrier defendant that it is neither our duty, nor was it contemplated by Congress, that we should give consideration to intermediate rates, where justification was shown by the existence of water competition at the more distant point for lower rates than to the nearer points. We do not take this to be the right construction of the law. As a practical matter, no doubt we shall find in many cases that we are permitting carriers to continue unlawful discriminations by carrying rates to intermediate points that are excessive, and in passing upon all applications it will not be practicable to make immediate investigation into the reasonableness of intermediate rates or the wide spread that may exist between the rates to nearer and more distant points. In point of law, however,

we have before us, on every application for deviation from the fourth section, the reasonableness of the rates which are involved in the carrier's application. Surely it was not the intention of Congress to permit a carrier to discriminate in favor of a more distant point to such an extent as to effect not only an undue discrimination against the nearer point, but the imposition of an excessive charge.

In considering the fourth section, it must always be remembered that the law flatly declares it to be unlawful for a carrier to charge more for a shorter than for a longer distance over the same line in the same direction. Under this provision the San Francisco-Talent rate of the Southern Pacific is unlawful. The law, however, establishes a method by which this absolute prohibition may be modified. The Commission is granted power to authorize a carrier, upon its application "in special cases" and after investigation, to charge less for longer than for shorter distances, and "may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section."

Under this last-quoted section the Commission, it would clearly appear, may prescribe the extent to which this otherwise unlawful plan of rate-making may be carried out. We may do this by various methods, (1) as in the *Spokane* and *Reno* cases, 21 I. C. C. Rep., 329, 400, by fixing a geographical limit within which there can be no discrimination, and permitting higher rates from other territory, having regard to the extent of the competition which justifies the discrimination; or (2) we may fix the limit of the rail rate at the more distant point with reference to the rate to intermediate points, thereby prescribing a zone of rate discrimination which may be lawful and justified; or, again, (3) where either of these methods does not seem to be practicable, it would appear entirely reasonable that we should permit the carrier to continue the rates which it has found by experience to be necessary at the more distant point, and, dealing with intermediate points alone, prescribe the reasonable rate which the carrier, as an outgrowth of its policies or its method of making rates, may not exceed.

That we should consider the reasonableness of the intermediate rates in limiting the extent to which discrimination may extend must be apparent to those who are familiar with the system of rate-making which obtains among transcontinental carriers where the rate to the intermediate point for an extended territory is made by a combination of the rate to the more distant point plus the local back to the point of destination. The Southern Pacific Company might increase its rate from a 51-cent scale to a scale of \$1 from San Francisco to Portland and probably lose little, if any, business. To do this would automatically raise intermediate rates based upon Portland to the

extent of 49 cents. Wherever, therefore, rates to intermediate points are made upon rates to more distant points the Commission should not only call upon the carrier to establish the nature of the competition between the basing points, but may properly require the carrier to convince the Commission that the rates so made do not result in unreasonable rates to intermediate points. The Government may properly determine what policy railroads shall pursue so long as the guarantees of the Constitution are safeguarded. If it is injurious to the interstate commerce of this country, and inimical to the public welfare, to permit its railroad highways to be used so as to unduly promote the growth and prosperity of one city as against another, by charging more to the nearer point, it is within the proper sphere of Congress to prohibit absolutely and completely the pursuance of such policy by the railroads. Congress, however, has not seen fit to do this. Out of consideration for the claims of the carriers, and out of respect for those policies under which our commerce has grown, Congress has permitted exceptions to be made to its general policy, when justification is shown therefor. It is not conceivable, however, that in the application of this governmental policy the carriers may be permitted to disregard any of the prohibitions of the law. It would seem, therefore, fundamental in the enforcement of the fourth section that a carrier shall make proof, not only of water competition, as in this case, but of the reasonableness of the rates applied to intermediate points.

To what extent, then, should the Southern Pacific Company be relieved from the command that it shall charge no more to points such as Talent, Medford, and Ashland than it charges to Portland? Assuming that it is demonstrated that the rate from San Francisco to Portland is below the normal, we conclude that while the carrier may make its rates base upon Portland it may not make rates which shall be unreasonable for the haul given. As said before, the theory of the carrier seems to be that any rate into southern Oregon from San Francisco which bases upon Portland's rate is justifiable because Portland is upon the water and the Portland rate is made somewhat with respect to water competition. By this method, however, it can be seen that the rate to Portland plus the rate back might make a rate that would be ridiculously high and yet would be made upon a water competitive rate to a more distant point. To this general question no further consideration need be given, the view of the Commission having been emphatically expressed in the *Intermountain cases*, 21 I. C. C. Rep., 329, 400.

In making rates to the intermediate points based upon the more distant point the carrier should give to the intermediate point the benefit of the Portland rate plus the local back, for more than this

would certainly be unjust. A combination of locals may not be exceeded even when the locals are in part a duplicate of each other. This combination, however, is exceeded to many points in Oregon. Moreover, the back-haul rate which is added to the long-distance rate as a basis for the rate to the intermediate point, if permitted as a factor, must conform to the restrictions of the act as to reasonableness.

The Commission has made investigation into the rates to points in southern Oregon and finds them to be excessive and unreasonable in themselves, thereby emphasizing the discrimination between such points and Portland.

DISCRIMINATION.

Even if the preceding conditions are met, the carrier should not unduly discriminate between its nearer and farther points, and by this is meant that it shall follow no different policy with respect to one point from that which it follows toward all other points similarly situated. A railroad is justified under the law in discriminating in favor of one city as against another if they are so differently circumstanced that at one point transportation forces are brought into play which are not or can not be exercised at another point. But a carrier is not justified in deliberately adopting a policy of preference toward one city as against another. Only the preference or advantage that is due is justifiable, and that advantage which is bestowed upon a city by the mere policy of the carrier and not by reason of actual difference in condition is undue. If one city is on the water and can operate boats to another city, it has an advantage which the rail carriers between the same points may recognize without violating the prohibition against undue preference. So if the water points at one end of a line are grouped, the water points at the other end of the line should be likewise grouped or the influence of the water recognized. Railroad policy must be consistent. This is, roughly, the meaning of the third section of the act.

Let us now see what the real situation is as to the rates covered by this application. The railroad has shown water competition between San Francisco and Portland. But it makes the same rates from many other points, some on the Bay of San Francisco and some on rivers flowing into the bay and some inland. It was shown that there was a water carrier between San Francisco and Portland, but there is no showing that there is direct water competition between any of the other points and Portland, although it is a matter within our knowledge that by transshipment at San Francisco traffic can move by water from most of the points involved to Portland. The carrier has failed to justify, nor has it attempted to justify, rates

from bay and river points to Portland the same as from San Francisco.

While extending San Francisco-Portland rates to bay and river points on the south, the carrier does not extend San Francisco-Portland rates to points on the Willamette River on the north. If there is reason for treating the southern points in a group, why should that same policy not be applied to the northern points? Of this there is no explanation offered by the carrier. Sacramento has the same rate to Portland that San Francisco has. Sacramento has the same first class rate to Oregon City, Salem, Albany, Eugene, and Roseburg, but to Medford Sacramento has a lower rate than San Francisco. What is the explanation of this? On that question the carrier is silent. Can it be that Sacramento is given the benefit of its nearer distance to Medford while being at the same time given the full benefit of the San Francisco rate not only to Portland but to other Willamette valley cities?

Albany is situated 80 miles to the south of Portland, approximately the same distance down the Willamette River that Sacramento is from San Francisco. The rate from Sacramento to Portland is the same as the rate from San Francisco to Portland. The rate from Sacramento to Albany is also the same as from San Francisco to Albany. But the rate from Albany to San Francisco is 15 cents less than the rate from Albany to Sacramento. There is no reason given for this difference. Is not the competition between San Francisco and Sacramento upon freight going by water from Albany through Portland and destined to Sacramento as strong and effective as competition from Sacramento to San Francisco upon freight going by water from Sacramento through San Francisco and Portland to Albany? That is to say, if the rate is the same northbound, why should it not be the same southbound? Furthermore, if the Southern Pacific Company makes no differential between Sacramento and San Francisco on traffic moving to Portland, why should it make a differential on traffic moving to San Francisco from Oregon City and Portland? Here is a violation of the long-and-short-haul clause entirely unexplained.

In view of the condition here presented, we must find that the carrier has not justified the rate situation presented in its tariff in these respects:

(1) The application of the same rates from other points upon San Francisco Bay and points inland to Portland as are extended from San Francisco.

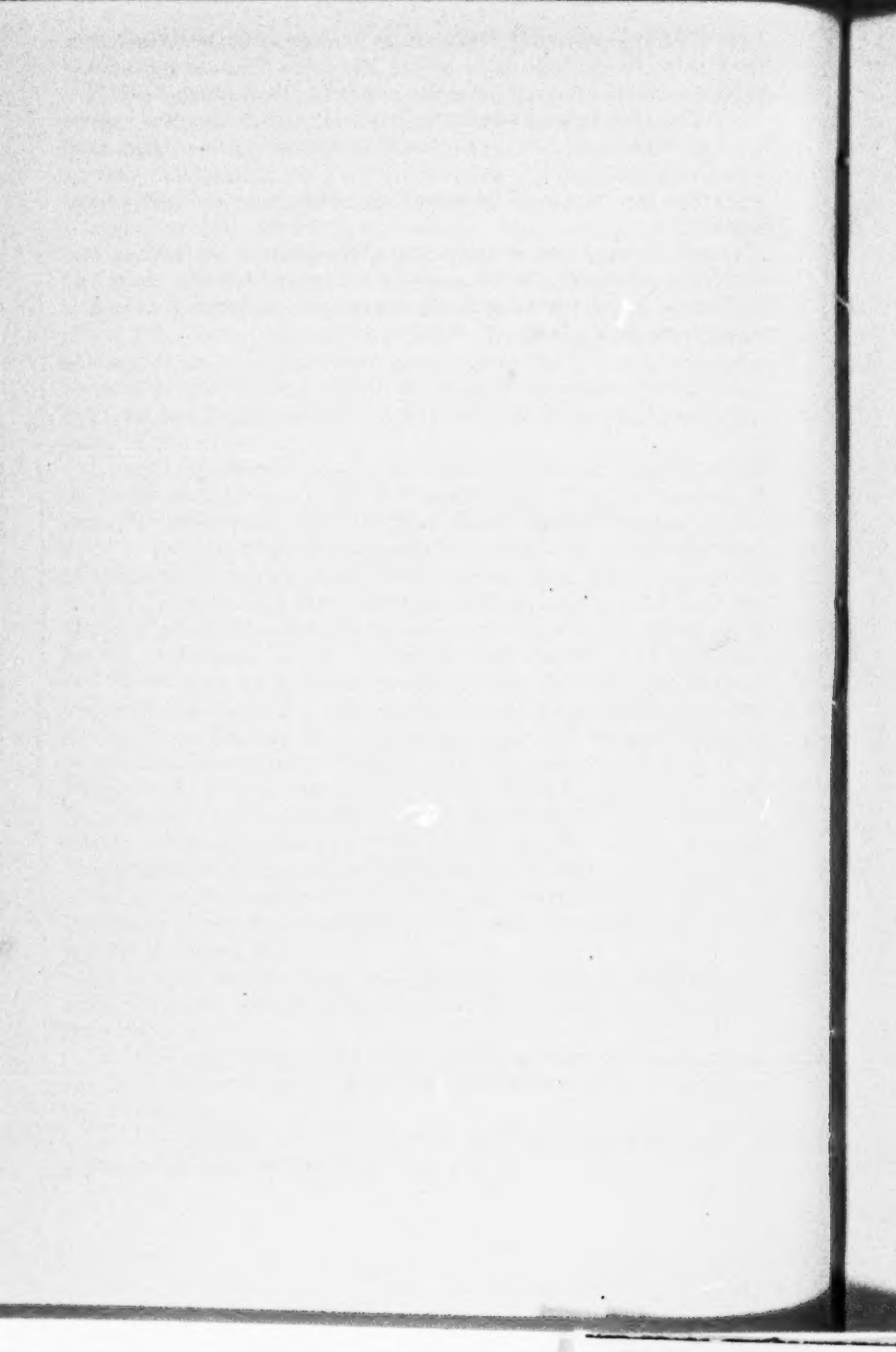
(2) The application of higher rates southbound from Portland to points inland than to San Francisco.

(3) The application of higher rates to points on the Willamette River on traffic northbound from San Francisco than are applied on traffic southbound from Portland to points on the Sacramento River.

(4) The application of rates from San Francisco that are higher to points between San Francisco and Portland than the combination of locals on Portland.

(5) The application of unreasonably higher rates at intermediate points.

Instead, however, of denying the application of the carrier, we shall give permission for it to make a further showing under its application in accordance with the views herein expressed as to the requirements of the law.



OPINION No. 1874.

INTERSTATE COMMERCE COMMISSION.

No. 879.

CITY OF SPOKANE ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

No. 879.

CITY OF SPOKANE ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

Submitted May 8, 1912. Decided May 14, 1912.

Commission declines to accept changes proposed in rates involved herein and will take no further action until decision of the Supreme Court in the original case.

SUPPLEMENTAL REPORT OF THE COMMISSION.

PROUTY, Chairman:

June 7, 1910, the Commission promulgated a report in this case by which it held that the class and commodity rates then in effect from eastern defined territories to Spokane and Spokane territory were unreasonable, and named certain rates which in its opinion would be reasonable. 19 I. C. C., 162. The class rates named were established and are now in force, but the establishment of the commodity rates was postponed pending an investigation into the effect of their establishment upon the revenues of the carriers.

Before the result of this investigation was fully known the fourth section was amended and the city of Spokane contended that under a proper application of that section, as amended, rates more favorable than those found reasonable by the Commission would result. Thereupon the Commission heard all parties in evidence and in argument, touching the interpretation and application of the fourth section to these transcontinental rates, and as a result issued on June 22, 1911, a fourth section order in this case. 21 I. C. C., 400. It did not establish the rates previously found reasonable by its report of June 7, 1910, for the reasons stated in the following paragraph, found on page 427 of the opinion:

We do not think that any further order should be made for the present in this case. It may be asked why the schedule of rates suggested by the Commission as reasonable should not be ordered in. The answer is that carriers should be permitted in so far as possible to adjust their own tariffs and that it seems probable that in compliance with this order carriers must establish rates in substantial accord with those suggested by us. It should be ever borne in mind that the acute complaint in this case is the discrimination and not the unreasonable rate. Obedience to this order will doubtless result in some rates from the east which are higher and in others which are lower than those suggested by the Commission since we did not then feel at liberty, as the complainants requested, to make the Spokane rate depend upon the coast rate. But it is likely that the resulting schedule will be more satisfactory to the complainants and

as more burdensome upon the defendants. If the carriers establish under this disposition of the case rates to Spokane which are excessive, a further order can be made in this proceeding reducing them to a proper basis.

Proceedings were begun in the Commerce Court to restrain the operation of our fourth section order of June 22, 1911, which resulted in an injunction from that court against the enforcement of the order. From this decree an appeal was at once taken to the Supreme Court of the United States, and in that court the case was advanced and was finally argued and submitted on February 27, 1912.

On April 8, 1912, the Supreme Court reassigned this case for argument in October. When it became evident from the action of the court that a considerable time must still elapse before a decision could be had, protests began to be received from the city of Spokane and other interested communities, urging that immediate steps be taken by the Commission to secure some relief from the present rates which had been condemned as unreasonable by us, and the Commission, feeling that some measure of relief should be granted, set the case down for further consideration on May 8, 1912, having under advisement the propriety of establishing forthwith the rates found reasonable by its opinion of June 7, 1910.

At this hearing the defendant carriers presented a schedule of carload commodity rates, from eastern defined territories to Spokane and Spokane territory. The rates named by this schedule were on the average some 4 per cent higher than those found reasonable by the Commission from the Missouri River, 7 per cent from Chicago, 10 per cent from Detroit and Pittsburgh, while from the Atlantic seaboard they were practically the same.

The schedule of the Commission had named both carload and less-than-carload commodity rates, but the schedule of the carriers embraced no less-than-carload rates.

It was stated by representatives of the defendant carriers and by the attorney of the city of Spokane that an agreement had been reached whereby this schedule was to be forthwith established by the carriers and this proceeding discontinued by the complainant. The approval of the Commission to this agreement was requested.

Upon this proposition the Commission remarks:

First. The *Spokane case* can not be discontinued. Other parties, involving other communities, have intervened and are parties to that proceeding. After the time and effort expended in perfecting that record the Commission would not feel warranted in allowing the proceeding to be discontinued until the matters in issue had been finally disposed of.

Second. The reasonableness of the proposed schedule has not been considered by the Commission and no opinion whatever is expressed thereon.

Third. No opinion is expressed whether less-than-carload commodity rates should be finally prescribed.

Fourth. The Commission adheres to the position which it has taken under the fourth section and will feel entirely free to dispose of this whole question as may seem just, when it is determined by the Supreme Court what action can be taken under that section.

If the carriers, understanding the position of the Commission to be as above stated, see fit to make the proposed rates effective by June 1 next, the Commission will take no further action until the final decision of the court upon the fourth section proceeding.

If the carriers do not, on or before May 25, 1912, notify the Commission of their intention to establish this schedule, the matter will be at once otherwise proceeded with as may seem just and proper in the premises.

By the Commission.

[SEAL.]

JOHN H. MARBLE,
Secretary

OPINION No. 1911.

INTERSTATE COMMERCE COMMISSION.

FOURTH SECTION APPLICATION DOCKET No. 1243.

IN THE MATTER OF THE APPLICATION OF SOUTHERN
PACIFIC COMPANY FOR RELIEF UNDER THE PRO-
VISIONS OF THE FOURTH SECTION WITH RESPECT
TO TRAFFIC MOVING BETWEEN PORTLAND AND
SAN FRANCISCO AND OTHER SAN FRANCISCO BAY
POINTS.

FOURTH SECTION APPLICATION DOCKET No. 1243.

IN THE MATTER OF THE APPLICATION OF SOUTHERN PACIFIC COMPANY FOR RELIEF UNDER THE PROVISIONS OF THE FOURTH SECTION WITH RESPECT TO TRAFFIC MOVING BETWEEN PORTLAND AND SAN FRANCISCO AND OTHER SAN FRANCISCO BAY POINTS.

Submitted May 6, 1912. Decided June 6, 1912.

Upon application for modification of the conclusions of the original report herein, *Held*, that:

1. The carrier has not justified the application of the same rates from other points upon San Francisco Bay and points inland to Portland as are extended from San Francisco to Portland.
2. The carrier has justified the application of higher rates southbound from Portland to points inland than to San Francisco.
3. The carrier has not justified the application of higher rates to points on the Willamette River on traffic northbound from San Francisco than are applied on traffic southbound from Portland to points on the Sacramento River.
4. The carrier has not justified the application of rates from San Francisco that are higher to points between San Francisco and Portland than the combination of locals on Portland.
5. The carrier has not justified the reasonableness of the higher rates existing at points between San Francisco and Portland or the discrimination now existing against such intermediate points.

Henry Thurtell for Interstate Commerce Commission.

Edward M. Cousin for Willamette Valley shippers, interveners.

Frank H. McCune for Medford Traffic Bureau, and *T. Jones Company*, interveners.

William R. Wheeler and *Seth Mann* for Traffic Bureau of Merchants' Exchange of San Francisco, intervener.

F. O. Dillard, *W. F. Herrin*, *H. A. Scandrett*, *C. W. Durbrow*, *W. W. Cotten*, and *C. B. Squires* for Southern Pacific Company.

SUPPLEMENTAL REPORT OF THE COMMISSION.

LANE, Commissioner:

A previous report in this matter, 22 I. C. C., 366, concluded as follows:

In view of the condition here presented, we must find that the carrier has not justified the rate situation presented in its tariff in these respects:

- (1) The application of the same rates from other points upon San Francisco Bay and points inland to Portland as are extended from San Francisco.

(2) The application of higher rates southbound from Portland to points inland than to San Francisco.

(3) The application of higher rates to points on the Willamette River on traffic northbound from San Francisco than are applied on traffic southbound from Portland to points on the Sacramento River.

(4) The application of rates from San Francisco that are higher to points between San Francisco and Portland than the combination of locals on Portland.

(5) The application of unreasonably higher rates at intermediate points.

Instead, however, of denying the application of the carrier, we shall give permission for it to make a further showing under its application in accordance with the views herein expressed as to the requirements of the law.

The further hearing has been had in which all parties have been fully heard, and after full consideration of the record the Commission is of the following opinion:

(1) The carrier has not justified the application of the same rates from other points upon San Francisco Bay and points inland to Portland as are extended from San Francisco to Portland.

The carrier claims that it instituted this policy in 1906 to increase its loaded-car movement northward. The carrier was asked to submit a statement showing the empty-car movement northbound for a period of years prior to 1906 and subsequent thereto. It has submitted a statement of the empty-car movement northbound and southbound for the years subsequent to 1906 but has submitted no record for the years prior thereto. This statement shows that of all of the cars moving northbound between June 25 and December 31, 1906, 22 per cent went empty, while for the same period but 3 per cent of the cars moving southward were empty. During 1907, 40 per cent of the cars northbound were empties and 5 per cent of the cars moving southbound were empties. In 1908 approximately 31 per cent of the cars moving northbound were empty and 9 per cent of the cars moving southbound were empty. In 1909 the percentage was 34 per cent northbound and 10 per cent southbound. In 1910, 30 per cent northbound, 9 per cent southbound. In 1911, 20 per cent northbound, 13 per cent southbound. The great volume of lumber moving southbound during 1907, 1908, 1909, and 1910 accounts for the small percentage of empties southbound and the large percentage of empties northbound. There is nothing in the statement as to the number of empties moving northbound prior to 1906, when the rates were put in, ostensibly to give northbound lading. This showing is insufficient to satisfy us that some points intermediate between San Francisco and Portland should be given the water competitive rate that San Francisco enjoys unless the carrier is willing to extend this policy to all intermediate points.

(2) The carrier has justified the application of higher rates southbound from Portland to points inland than to San Francisco.

In this connection the following colloquy is pertinent. The witness on the stand was the traffic manager for the Southern Pacific, and the questions were put by an examiner:

TRAFFIC MANAGER. The reason we do not apply southbound to the inland points the same rates that we apply to San Francisco, while we make them the same northbound, is because there is no empty movement of cars southbound to any extent.

EXAMINER. Then, what you want the Commission to understand is this, with respect to 1 and 2, that you make your rates from Portland to San Francisco and to Lathrop and all these other points what you can get?

TRAFFIC MANAGER. Yes, sir.

EXAMINER. And that you are able to get these arbitraries above the San Francisco rate southbound, but that experience has demonstrated that while it would appear that you could get the same rate northbound, your northbound empty-car movement was so large that it was to your interest to make those rates even more attractive than the conditions would apparently warrant, and that you have made those rates more attractive in order to get more of your business to fill up your empty cars?

TRAFFIC MANAGER. That is it exactly.

(3) The carrier has not justified the application of higher rates to points on the Willamette River on traffic northbound from San Francisco than are applied on traffic southbound from Portland to points on the Sacramento River.

The explanation of this situation given by the carrier through its traffic manager is as follows:

The rates northbound from San Francisco to points on the Willamette Valley are made by combining on Portland. The rate so made to each point in the Willamette Valley is different one from the other, according to the local rate in effect from Portland to points south, being a higher rate as you recede from Portland. And that applies, naturally, a higher rate to Willamette Valley points northbound from San Francisco to some of the points, and from points near Portland they would be less than the Sacramento rate. Generally speaking, I would state that to be correct.

The reason the Portland and Sacramento River points rates are lower is because the rate is made by combining, if you please on San Francisco as far as Sacramento, and that is made by taking the ocean rate of 45 cents, first class, and adding to that the old Sacramento River rate of 15 cents, making a through rate of 60 cents, and that was the maximum at all points on the Sacramento River, and therefore was not a graduated rate or a full combination of what we might call the rail rates, but of the Sacramento River rates, and therefore made to Sacramento and made to points along the peninsula, Port Costa, and those points a 60-cent rate, which I considered generally lower than most of the points have on traffic going from San Francisco northbound to Willamette Valley points, because of the local rate increasing as we recede from Portland.

There has been no showing made, other than this, as to why the same policy should not be pursued by the carrier as to Willamette Valley points that is pursued by the carrier as to Sacramento River points. If Portland is not entitled to any lower rates to intermediate

points on the Sacramento River, then San Francisco is not entitled to any lower rates to intermediate points on the Willamette River.

(4) The carrier has not justified the application of rates from San Francisco that are higher to points between San Francisco and Portland than the combination of locals on Portland. This matter was treated of in the previous report, and nothing was added by this record, excepting the statement that the carrier can not defend this situation excepting as a temporary matter. The rates which have been established by the Oregon commission as local rates from Portland south are effective at present, but the order of the commission is being resisted by the carrier and the case is now in the Supreme Court. When this litigation is concluded, the carrier says, if the Oregon commission scale is upheld, the rates to intermediate points will be made on the combination of the rate to Portland plus the Oregon commission scale south.

(5) The carrier has not justified the reasonableness of the higher rates existing at points intermediate between San Francisco and Portland or the extent to which it now discriminates against intermediate points.

CHICAGO, July 9, 1914.

Application for modification of fourth section order No. 124, applications Nos. 205, 342, 344, 349, 350, 352.

The Interstate Commerce Commission, Washington, D. C.

GENTLEMEN: In the name and on behalf of each of the carriers, parties to the above-named applications for relief from the provisions of the fourth section of the act to regulate commerce, as amended June 18, 1910, the undersigned, acting as agent and attorney or under authority of concurrences filed with the commission for each of the said carriers, respectfully petitions the Interstate Commerce Commission:

1. To extend the effective date of its fourth section order No. 124 of June 22, 1911, until October 1, 1914, to enable carriers to publish, file, and make effective rates to conform with requirements of the order except on commodities shown in the attached list and designated as Schedule C, and as to those commodities extend the effective date of its order until January 1, 1915.

2. To modify its order so that the zone boundary lines provided therein will conform to the territorial boundary lines approved by the commission after hearing and investigation (see I. & S. Docket 207, I. C. C. 28-1) and now published in the westbound transcontinental tariff, such modification being necessary to permit the uniform application of rates from eastern points of origin to both Pacific coast terminal and intermediate points under fourth section order No. 124.

3. To grant the interested carriers a hearing beginning on or
298 about October 6, 1914, upon the commodities enumerated in Schedule C, it being the purpose of the carriers to show that as to these commodities the conditions are such as to justify a greater degree of relief than is afforded under the original fourth section order No. 124.

There is attached hereto and made a part hereof three exhibits, as follows:

Schedule A: A list of commodities upon which the rates to the Pacific coast terminals will apply as the maximum to intermediate points of destination, and upon which no relief is requested. This schedule contains many commodities, particularly those in which the individual is much interested as a consumer, such as fruit, grain, flour, vegetables, and other products of the soil; agricultural implements, building material, etc., upon some of which the rates are low, but upon which the carriers will continue to apply the rates as the maximum.

Schedule B: A list of commodities subject to the competition at the Pacific coast terminals of carriers by sea, but upon which the rates to said Pacific coast terminals via the rail routes are generally not less than \$2.00 per 100 pounds when in less-than-carload ship-

ments and \$1.00 per 100 pounds when in carload shipments, and as to which the carriers will observe the provisions of fourth section order No. 124.

Schedule C: A list covering generally manufactured commodities subject to the most severe competition at the Pacific coast terminals of carriers by sea, and upon which the rates to said Pacific coast terminals via the rail routes are less than \$2.00 per 100 pounds when in less-than-carload shipments and less \$1.00 per 100 pounds when in carload shipments, which rates are subnormal to a marked degree, measured by any recognized standard, such as rates fixed by
299 the commission as reasonable rates in and of themselves from eastern points to the territory west of the Missouri River, but are necessary to move a share of this sea competitive traffic via the rail routes, also to enable manufacturers and shippers at points of production not located directly upon the Atlantic seaboard to share in the trade of the Pacific coast.

The commission stated in its opinion that the average rate obtainable upon traffic to the Pacific coast terminals was sufficient to warrant the application of all such rates in accordance with the original order No. 124, but it is pointed out that these schedule C rates, which, measured by recognized standards, are so low as to warrant the suggestion that they should not be used as the measure of or basis for rates to intermediate points, since it may fairly be said that while the acceptance of such traffic by the rail carriers will not result in a burden upon other traffic that the use of the rates as a basis for rates to intermediate points will make necessary an adjustment of rates on other traffic not proper under the circumstances.

What carriers now ask is sufficient time to place before the commission with respect to the commodities shown in schedule C such evidence as will in their opinion completely justify a greater degree of relief from the provision of the amended fourth section than is granted in order No. 124, it being understood that if this petition is granted order issued by the commission after hearing the testimony which it is desired to present will be promptly complied with.

The time for filing applications for relief from the amended fourth section expired February 17, 1911, and these cases were heard
300 in March, 1911. They were the first important cases of this kind dealt with under the amended law. Its meaning was not as fully defined and understood as it has now become, and carriers were not prepared, nor was it possible for them to prepare themselves to show the conditions surrounding the traffic involved as it should be shown and as they feel now that they are prepared to show. Complete data was not at hand nor available, nor had the method of analyzing these things been developed to the perfection since obtained. Carriers feel that under later practice and experience they can present convincing facts and arguments in support of certain modifications which should be before the commission before the case is finally disposed of.

As the result of conference between shippers and carriers since the original order was made and after informal conference with commission, commodity rates from all eastern points to intermountain territory concerned were established upon all commodities in the list that moved in carloads in sufficient volume to justify commodity rates. The adjustment is generally satisfactory to interior shippers, and the commission by formal order permitted the rates to go into effect. These rates reduced the then existing rates very considerably, and it seems fair to state are reasonably satisfactory to shippers. The complaints of interior shippers have almost wholly been directed against discrimination and but little against the rates in and of themselves. Before order No. 124 was made, the commission reduced all the class rates from eastern points to all intermountain territory. This adjustment, in order to maintain a reasonable relation, caused a reduction either by order of the commission or voluntary act of carrier from all western territory to intermountain territory not only in the class rates, but because of changes in the westbound commodity rates certain changes had to be made in the eastbound commodity rates to intermountain territory. All these changes in rates at intermountain points have given the intermountain territory such a large measure of relief in the direction of its request, and that to-day the intermountain territory is not suffering in its competition with terminal points on account of rates via the rail routes.

On account of the large amount of revenue and changes in rate relation involved, it is hoped the commission will grant this application so that before final action is taken the situation as it exists to-day will be clearly before them.

Yours, respectfully,

R. H. COUNTESS, *Agent.*

INTERSTATE COMMERCE COMMISSION.

FOURTH SECTION APPLICATIONS NOS. 349, 675, 677, 1766, AND 8835.

FOURTH SECTION VIOLATIONS IN RATES ON SUGAR.

IN THE MATTER OF APPLICATIONS FOR RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE, AS AMENDED JUNE 18, 1910, WITH RESPECT TO RATES ON SUGAR FROM SAN FRANCISCO, CAL., AND BEET-SUGAR-PRODUCING POINTS IN THE STATES OF CALIFORNIA, UTAH, AND NEVADA, AND OTHER WESTERN STATES TO CHICAGO, ILL., AND POINTS INTERMEDIATE THERETO; WITH RESPECT ALSO TO RATES ON SUGAR FROM COLORADO PRODUCING POINTS AND NEW ORLEANS, LA., TO EL PASO, TEX., AND FROM NEW ORLEANS TO STATIONS IN ILLINOIS, ARKANSAS, IOWA, KANSAS, AND VARIOUS OTHER STATES.

Submitted May 8, 1914. Decided July 21, 1914.

1. Authority to continue rates on sugar from San Francisco and from California beet-sugar-producing points to Missouri River points lower than to intermediate stations via reasonably direct lines denied.
2. Authority to continue rates on sugar from Colorado producing points and New Orleans, La., to El Paso, Tex., lower than to intermediate points denied.
3. Authority to continue rates from San Francisco and from California producing points to Missouri River points lower than to intermediate stations via certain indirect routes granted.
4. Authority to continue rates from New Orleans, La., to Oklahoma points lower than to intermediate Texas points via direct lines denied.
5. Authority to establish rates from California producing points to Chicago, Ill., lower than to intermediate points granted.

E. W. Camp and *George D. Squires* for Atchison, Topeka & Santa Fe Railway Company; Southern Pacific Company; and other carriers.

C. W. Owen for Morgan's Louisiana & Texas Railroad & Steamship Company.

Fred H. Wood for Southern Pacific Company.

Frank Koch for Texas & Pacific Railway Company.

J. C. La Coste for Chicago, Rock Island & Pacific Railway Company.

D. R. Lincoln for Missouri Pacific Railway Company.

C. H. Hamilton for Kansas City Southern Railway Company and Texarkana & Fort Smith Railroad Company.

C. F. Foley for Public Utilities Commission of Kansas.

J. J. Morrison for Chicago Great Western Railroad Company.

H. L. Traber for Midland Valley Railroad Company; Missouri, Oklahoma & Gulf Railway Company and its receivers; and Missouri, Oklahoma & Gulf Railway Company of Texas.

J. H. Hershey for Gulf, Colorado & Santa Fe Railway Company.

A. P. Matthew for Western Pacific Railway Company and Denver & Rio Grande Railroad Company.

J. R. Koontz and *T. J. Norton* for Atchison, Topeka & Santa Fe Railway Company.

R. W. Barrett for trunk lines and Atlantic coast refiners.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This is an investigation undertaken by the Commission with reference to the applications of carriers for relief from the provisions of the fourth section of the act to regulate commerce as amended June 18, 1910, with respect to rates on sugar.

One portion of application No. 349 filed by R. H. Countiss, agent, on behalf of carriers participating in the rates published in his tariff I. C. C. No. 926 and in other tariffs asks authority to continue lower rates on sugar via certain routes from San Francisco, Cal., and from beet-sugar-producing points in California, Utah, and Arizona to destinations on and east of the Missouri River than the rates concurrently applicable on like traffic to intermediate stations.

One portion of application No. 675, filed by F. A. Leland, agent, on behalf of the carriers participating in the rates published in his tariff I. C. C. No. 739, asks authority to continue lower rates on sugar from Colorado beet-sugar-producing points to El Paso, Tex., than to intermediate points.

One portion of application No. 677, filed by F. A. Leland, agent, on behalf of carriers participating in the rates published in his tariff I. C. C. No. 778, asks authority to continue lower rates on sugar from New Orleans, La., and points taking the same rates to El Paso, Tex., than the rates concurrently applicable on like traffic to intermediate points.

Certain portions of application No. 1766, filed by W. P. Emerson, agent, on behalf of carriers participating in the rates published in his molasses and sirup tariff No. 1, I. C. C. No. 1, asks authority to continue lower rates on sugar from New Orleans to various points in the states of Arkansas, Illinois, Iowa, Kansas, and other states than the rates concurrently applicable on like traffic to intermediate points.

Application No. 8835, filed by R. H. Countiss on behalf of carriers participating in the rates published in his tariff I. C. C. No. 978, asks authority to establish a rate of 46 cents per 100 pounds on sugar in earloads, minimum weight 60,000 pounds, from San Francisco, Cal., and other sugar-producing points in California, Nevada, Arizona, and Utah to Chicago, Ill., and to establish rates from the same points of origin to all points between the Missouri River and Chicago 23 cents per 100 pounds higher than the present rates to the same points from New Orleans, La., while continuing higher rates to intermediate stations. The applications above described will be discussed in the order stated.

Application No. 349 covers the rates from California points to Chicago and territory between Chicago and the Missouri River via several routes—

First. The route afforded from San Francisco via the Western Pacific, Denver & Rio Grande, and the Missouri Pacific railroads.

Second. The route from San Francisco and other California points of the Atchison, Topeka & Santa Fe Railway via Bakersfield, Cal., Albuquerque, N. Mex., and Trinidad, Colo.

Third. The route afforded by the Southern Pacific from San Francisco and other California points to El Paso; El Paso & Southwestern to Tucumcari, N. Mex., and thence via the Chicago, Rock Island & Pacific.

Traffic is carried via all of these three routes, and relief from the requirements of the fourth section of the act to regulate commerce is sought via each route.

Another route is afforded by the lines of the Southern Pacific and Union Pacific through Ogden, Utah; Cheyenne, Wyo.; and Omaha, Nebr. The rates via that route from San Francisco increase with the distance until in the easterly portion of Nevada they become 55 and 60 cents per 100 pounds for carload minima of 60,000 and 36,000 pounds, respectively. These rates are blanketed to all stations beginning in the vicinity of Elko, Nev., and extending to and including Omaha, Nebr. East of Omaha the rates increase until they reach 60 and 65 cents on the carload minima above stated, which are the rates to Chicago and other stations intermediate thereto in Illinois and to nearly all stations in the state of Iowa. These are the highest rates that are applied to any points on this route. This route therefore has its rates aligned with the requirements of the fourth section.

The rates from San Francisco on the Western Pacific increase with distance until the station Gerlach, Nev., is reached. The rates to that point are 55 and 60 cents per 100 pounds on the carload minima named above. These rates are blanketed to all stations east of that

point up to and including what are known as Utah common points. To territory in Colorado from Grand Junction to Canon City on the Denver & Rio Grande a rate of 75 cents is applied with a carload minimum of 36,000 pounds. At Pueblo and other Colorado common points the rates are 55 and 60 cents, and these rates are blanketed to all territory from Colorado common points to and including Missouri River points. East of the Missouri River the rates increase to 60 and 65 cents, which latter-named rates are not exceeded at points between the Missouri River and Chicago.

The rates from San Francisco to points on the Atchison, Topeka & Santa Fe Railway, hereinafter called the Santa Fe, are as follows, in cents per 100 pounds, using a carload minimum of 36,000 pounds:

From San Francisco to—	Miles.	Rate.
Needles, Cal.....	621	79
Flagstaff, Ariz.....	855	100
Albuquerque, N. Mex.....	1,199	100
Trinidad, Colo.....	1,467	100

¹ Carload minimum 36,000 pounds.

² Carload minimum 60,000 pounds.

The rates to Trinidad are blanketed to all stations between that point and the Missouri River. To points between the Missouri River and Chicago the rates are 60 and 65 cents for the respective carload minima stated.

Below are shown the rates, in cents per 100 pounds, from San Francisco to representative points on the route from San Francisco via the Southern Pacific, El Paso & Southwestern, and Rock Island railroads, carload minimum 36,000 pounds:

From San Francisco to—	Rate.	From San Francisco to—	Rate.
Yuma, Ariz.....	85	Vaughn, N. Mex.....	100
Tucson, Ariz.....	93	Tucumcari, N. Mex.....	100
Lordsburg, N. Mex.....	100	Dawson, N. Mex.....	80
El Paso, Tex.....	60	Missouri River points.....	60

East of the Missouri River the same rates are applied as have been hereinbefore named in connection with other routes.

The relief sought by the Western Pacific, Denver & Rio Grande, and Missouri Pacific has reference to the rates to a group of stations in Colorado beginning at or near Grand Junction and extending to but not including the Colorado common points on the east. To these stations a carload rate of 75 cents per 100 pounds, minimum weight 36,000 pounds, is applied as compared with a rate of 60 cents per 100 pounds applied to territory east of and including Colorado common points.

The justification urged by the Denver & Rio Grande for this departure from the fourth section is the competition that is met at Denver, Pueblo, and other Colorado common points of the routes afforded by the Southern Pacific-Union Pacific lines. The distance to Pueblo via the Southern Pacific, Union Pacific, and Denver & Rio Grande is 1,492 miles; via the Western Pacific and Denver & Rio Grande, 1,545 miles. The distance to Denver via the Southern Pacific route is 1,374 miles and via the Western Pacific and Denver & Rio Grande is 1,663 miles. The route of the Western Pacific and Denver & Rio Grande is longer than that of its competitor to Denver. Its line is also less advantageously located, running through an extremely mountainous section of country with severe grade, curvature, and climatic conditions. The rates made to the Colorado common points, however, are blanketed to a territory 600 miles in width extending from these points to the Missouri River and the rates to all the territory east of the Missouri River up to Chicago are but 65 cents for the 36,000-pound minimum. Under these circumstances a rate of 75 cents to these local Colorado points between Grand Junction and Canon City more than 1,000 miles west of Chicago can not be justified and the application of the carriers with respect to these rates will be denied.

The Santa Fe is in the position of asking relief from the requirements of the fourth section as to the rates from San Francisco to all stations lying between the California-Arizona state line on the west and Trinidad, Colo., on the east. The justification urged for this departure from the requirements of the fourth section is the competition met at Trinidad of the rates made to that point over the Southern Pacific, Union Pacific, and Colorado Southern. The distance via the Santa Fe from San Francisco to Trinidad is 1,465 miles. The distance to the same point via the Southern Pacific, Union Pacific, and Colorado Southern is 1,572 miles, and via the latter lines the rate made to Trinidad is not exceeded at the intermediate points. The Santa Fe is at no material disadvantage, or at any disadvantage whatever, so far as this record shows with regard to the competition at Trinidad. The rates made to that point are blanketed to all stations between Trinidad and the Missouri River, a territory several hundred miles in width. In view of the fact that this carrier participates in a rate of 60 cents per 100 pounds from San Francisco to the Missouri River and in a rate of 65 cents per 100 pounds to territory lying between the Missouri River and Chicago, we are of the opinion that the maintenance of lower rates to Trinidad and other points east thereof while continuing the present higher rates to intermediate stations in Arizona, New Mexico, and Colorado has the effect of unduly discriminating against the latter-mentioned points,

and the application for relief from the provisions of the fourth section with respect to these rates should be denied.

The route afforded by the Southern Pacific, El Paso & Southwestern, and Chicago, Rock Island & Pacific from San Francisco to Chicago passes through El Paso. To this point a rate of 60 cents per 100 pounds is carried with a carload minimum of 36,000 pounds, while the rates to intermediate points in Arizona are materially higher. The justification urged for this relation of rates is that the rate to El Paso has been necessitated by the competition of carriers bringing sugar from New Orleans, La., and from Sugarland, Tex., and of other carriers serving the beet-sugar-producing points in Colorado. The rate on sugar from New Orleans to El Paso is 55 cents per 100 pounds, with a carload minimum of 33,000 pounds. The rate from Sugarland, Tex., is 47 cents. The rate from the Colorado beet-sugar-producing points is 49 cents. The testimony shows that no great amount of this Colorado sugar has been shipped to El Paso, and the rate made from these points does not appear to have had any material influence in fixing the rates from California. It is clear that the rate from San Francisco to El Paso has been adjusted at its present level in order to permit sugar from San Francisco and beet-sugar-producing points in California to move to El Paso in competition with the sugar coming from New Orleans and Sugarland, Tex. It does not appear, however, that the carriers serving El Paso from the west are at any material disadvantage as against carriers serving the same point from the east. Neither does it appear that these rates to El Paso from San Francisco are abnormally low. They are the same rates that are carried to all territory on the Union Pacific and Southern Pacific between Elko, Nev., and the Missouri River and but 5 cents lower than the rates made from San Francisco to Chicago. We are of the opinion that the rates from San Francisco to El Paso via the route named should not be exceeded at intermediate points.

The route afforded via the Southern Pacific, El Paso & Southwestern, and the Rock Island is at some disadvantage as against more direct routes on business to the Missouri River. This route is materially longer and much of it passes over a rather sparsely settled territory. The distance from San Francisco via this route to Kansas City is 2,234 miles, as against the short route of the Southern Pacific and Union Pacific of 1,786 miles from San Francisco to Omaha. Tucumcari, N. Mex., is 331 miles northeast of El Paso and 1,617 miles from San Francisco. The rate to this point both from Los Angeles and San Francisco is \$1 per 100 pounds with a carload minimum of 36,000 pounds. We are of the opinion that the rates made to the Missouri River should not be exceeded at intermediate points via this

line west of and including Tucumcari and that east of Tucumcari they should not exceed the rates to the Missouri River by more than 10 cents per 100 pounds.

Application No. 675 asks authority to continue lower rates from Colorado beet-sugar-producing points to El Paso, Tex., than to intermediate points. This sugar originates at various points in Colorado, of which Rocky Ford is representative, and is transported to El Paso over distances varying from 600 to 850 miles. The rate from all of these points to El Paso is 49 cents. The rate from Rocky Ford to Albuquerque, 357 miles, is 50 cents; to Berino, N. Mex., 586 miles, 65 cents. This is the highest rate applicable to any intermediate point on the Santa Fe. The justification urged for the maintenance of lower rates from these Colorado points to El Paso than to intermediate points is the competition met at that point of carriers serving El Paso from New Orleans, La., and Sugarland, Tex. This, however, is competition concerning which these petitioners are at no disadvantage so far as this record shows either in distance or in relative strength and traffic density of the lines involved. The application for relief with respect to these rates will be denied.

Application No. 677 asks authority to continue lower rates on sugar from New Orleans to El Paso than to intermediate points. The direct route of the Texas & Pacific from New Orleans to El Paso is 1,180 miles in length, and the rate of 55 cents made by that line to El Paso is not exceeded at points east of Eagle Flat, Tex. This station is 106 miles east of El Paso and 1,074 miles from New Orleans. The maximum rates are reached at stations Iser to Alfalfa, to which a rate of 58 cents is applied. Alfalfa is the first station east of El Paso. The Galveston, Harrisburg & San Antonio Railway also serves El Paso from New Orleans over a line 1,192 miles in length. The highest rate applied to any intermediate point on this line is 58 cents.

The Atchison, Topeka & Santa Fe, which has recently completed a line from Lubbock, Tex., to Clovis, N. Mex., desires to participate in this traffic from New Orleans to El Paso, using the Galveston, Harrisburg & San Antonio Railway from New Orleans to Beaumont, and thence via the Santa Fe through Somerville and Lubbock, Tex., Clovis and Belen, N. Mex. This route is 1,450 miles in length. East of Sweet Water the rates do not exceed the rates to El Paso. West of that point higher rates are carried to Texas and New Mexico points. The justification urged by the direct lines of the Texas & Pacific and the Galveston, Harrisburg & San Antonio for the maintenance at El Paso of lower rates on sugar than are accorded intermediate points is that the rates to the three gateways from Texas to Mexico, namely, Laredo, Eagle Pass, and El Paso, should be kept as nearly equal as possible in order to permit traffic passing through these points to

points in Mexico to reach its ultimate destination at rates which are on a substantial parity. It is urged also that the disparity between the rates to El Paso and to intermediate points is one of long standing, and that any decision adverse to this relation in the sugar rates will be to a certain extent applicable to rates on classes and other commodities. Laredo is very much nearer to New Orleans than is El Paso, and as a gateway into certain parts of Mexico possesses some advantages over El Paso. Laredo is, however, 774 miles by rail from El Paso, and there can be little if any necessity for the maintenance of any exact relation between the rates to these two points from New Orleans. The disparity between the rates to El Paso and to intermediate points is small, but we are of the opinion that justification has not been shown for any departure from the requirements of the fourth section as to these rates, and the applications of the Texas & Pacific and the Galveston, Harrisburg & San Antonio railways for relief will be denied.

The line of the Santa Fe from New Orleans to El Paso is 23 per cent longer than the short line and on this account some relief from the requirements of the fourth section should be afforded. The rates to intermediate points, however, via this line should bear a reasonable relation to the rates made to El Paso by the direct line. Vaughn, N. Mex., is 1,118 miles from New Orleans via the route of the Santa Fe. We are of the opinion that the rates made to El Paso via this line should not be exceeded at Vaughn and points east thereof. To stations west of Vaughn these carriers should be permitted to carry rates on sugar from New Orleans that are higher than the rates to El Paso but should not exceed the rates to that point by more than 10 cents per 100 pounds.

Application No. 1766 asks relief from the provisions of the fourth section respecting rates on sugar from New Orleans and other points in Louisiana to a very wide territory of destination in the states of Arkansas, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and various other states. The territory is so large and the number of carriers involved is so great that it is impracticable to discuss the rates and routes to every point of destination. The general relation of these rates, one to another, will be discussed and the rates via certain specific routes to some of the principal points will be shown.

POINTS OF ORIGIN.

There are certain sugar-producing points in Louisiana lying along the lines of Morgan's Louisiana & Texas Railroad & Steamship Company, the New Orleans, Texas & Mexico Railroad Company, the New Iberia & Northern Railroad Company, and the Texas & Pacific Railway Company. From all of these producing points which are inter-

mediate to New Orleans on routes from New Orleans to stations west of the west bank of the Mississippi River rates are, or will be, published which are the same as the rates from New Orleans. There will therefore be no violation of the fourth section as to points of origin on this traffic to the territory west of the Mississippi River. To St. Louis, Cairo, Chicago, and certain points east of the Mississippi River the rates from points on the above-named railroads are from 2 to 5 cents per 100 pounds higher than from New Orleans. The short line and the normal method of routing from this territory to Chicago and Illinois territory is via New Orleans. These railroads ask authority to continue to route this traffic through their western Louisiana junctions, Alexandria, Eunice, Baton Rouge, Lake Charles, and Cheneyville, delivering it to their connections at these points and maintaining higher rates from intermediate points than from the more distant point, New Orleans. The rate-making lines from New Orleans to Cairo, St. Louis, and Chicago are east of the Mississippi River and the routes used by the originating lines named above via Alexandria, Eunice, Baton Rouge, Lake Charles, and Cheneyville are in all instances markedly circuitous. This part of their applications for relief from the requirements of the fourth section as to this traffic will be granted.

POINTS OF DESTINATION.

The short lines from New Orleans to Cairo, St. Louis, and Chicago are east of the Mississippi River. The rate to Cairo is 17 cents; to St. Louis, 17 cents; and to Chicago, 23 cents. In the report of the Commission respecting rates on sugar from New Orleans to Ohio and Mississippi river crossings, 31 I. C. C., 495, the rates to Cairo and St. Louis were discussed, and the carriers east of the river were authorized to continue their present rates to Cairo and St. Louis and higher rates to intermediate points. The rate made to Chicago through Cairo or through St. Louis is not exceeded at intermediate points north of Cairo or St. Louis via any of the reasonably direct lines.

The rates on sugar from New Orleans to the principal points lying along the Mississippi River north of St. Louis are as follows, in cents per 100 pounds:

From New Orleans to—	Rate.	From New Orleans to—	Rate.
Louisiana, Mo.....	23	Clinton, Iowa.....	28
Hannibal, Mo.....	23	La Crosse, Wis.....	30
Quincy, Ill.....	23	Winona, Minn.....	30
Keokuk, Iowa.....	26	Minneapolis, Minn.....	30
Burlington, Iowa.....	28	St. Paul, Minn.....	30
Davenport, Iowa.....	28		

The stations in Illinois lying along all fairly direct lines between Cairo and East St. Louis take a group rate of 20 cents. The stations

lying along the direct lines between St. Louis and Chicago take a group rate of 23 cents. The rates named above to the Mississippi River points are not exceeded at points between Chicago and the Mississippi River. Traffic moving westerly through Illinois moves under rates which accord with the fourth section, but traffic moving through Keokuk, Iowa, and points north thereof eastwardly toward Chicago passes from higher to lower rated territory.

The rates to many points in Illinois and Wisconsin have been influenced by the rates on sugar from New York. Below are shown the rates from New Orleans and the rail-lake-and-rail rates from New York to Chicago and some of the Mississippi River points north of St. Louis:

To—	New Orleans.	New York.	To—	New Orleans.	New York.
Chicago, Ill.....	23	23	Davenport, Iowa.....	28	29
Hannibal, Mo.....	23	27	Clinton, Iowa.....	28	29
Keokuk, Iowa.....	26	27	La Crosse, Wis.....	30	30
Burlington, Iowa.....	28	29	Minneapolis and St. Paul, Minn	30	30

The rates on sugar from New York to the territory herein involved grade with distance and are in accord with the long-and-short-haul rule, and since this traffic and the gradation of the rates is from east to west the carriers serving New Orleans have to a considerable extent adapted their rates to the rates from New York.

Traffic from New Orleans routing through Chicago and passing in a northwesterly direction across Wisconsin reaches its destination at any of these Mississippi River points without passing through higher to lower rated territory. Traffic, however, that is routed through any Mississippi River crossing north of and including Keokuk, Iowa, and passing northeasterly across Illinois or Wisconsin to destinations on the southwest shore of Lake Michigan traverses higher-rated territory.

The rates on sugar from New Orleans to points on the Missouri River begin with 17 cents to St. Louis and increase as Jefferson City, Mo., is approached. The rate to Jefferson City is 32 cents, and this rate is blanketed to all stations along the Missouri River to Sioux City, Iowa, inclusive. This includes Boonville, Mo.; Kansas City, Mo.; Leavenworth, Kans.; St. Joseph, Mo.; Omaha, Nebr.; and Council Bluffs, Iowa. The rates to points on the Mississippi River forming the east boundary of the state of Iowa increase from 26 cents at Keokuk to 30 cents at De Soto, Wis., near the extreme northeast corner of Iowa. The rates to points on the west boundary of Iowa are 32 cents to all stations south of Sioux City and 33½ cents to stations north thereof. The rates to all points in Iowa vary between the two limits named. Traffic moving in a westerly or northwesterly

direction across the state moves on rates which accord with the long-and-short-haul rule. Traffic, however, which moves through Omaha, Kansas City, or any of the Missouri River gateways to points on and near the east boundary of the state of Iowa moves through higher to lower rated territory. A fairly direct line from New Orleans to Kansas City is the Texas & Pacific from New Orleans to Texarkana, thence the Kansas City Southern to Kansas City. The rate to Texarkana is 25 cents. To Ashdown, a point approximately 20 miles north of Texarkana, the rate is 32 cents, and this rate is blanketed to all stations north of Ashdown to Kansas City, inclusive. The Kansas City Southern nearly coincides with the west boundary of the states of Arkansas and Missouri, and the rate made to stations on the Kansas City Southern should be the maximum rate applied to any station in these states. The rate to Helena, Ark., and Memphis, Tenn., is 12 cents, and to Cairo, as before stated, is 17 cents. The rates to these Mississippi River points have been strongly influenced by competition on the Mississippi River. Rates grade westerly from the Mississippi River toward the west boundary of these states, and traffic moving in a northwesterly direction may, and generally does, move under rates that accord with the rule of the fourth section. Lines, however, that traverse these states in a northeasterly direction carry the traffic through higher to lower rated territory and ask relief from the provisions of the fourth section in order to continue such rates.

Below are shown the rates in force from New Orleans to a number of representative points, together with the rates to the highest rated point intermediate thereto:

More distant point.	Rate.	Highest rated intermediate point.	Rate.
	Cents.		Cents.
St. Paul, Minn.....	30	Mankato, Minn.....	34
St. Louis, Mo.....	17	Arcadia, Kans.....	32
Kansas City, Mo.....	32	Herington, Kans.....	40
Chicago, Ill.....	23	Dubuque, Iowa.....	28
La Crosse, Wis.....	30	Fountain, Minn.....	32
Minnesota City, Minn.....	30	Eagle Lake, Minn.....	34
Red Wing, Minn.....	30	Elysian, Minn.....	34
Bloomfield, Iowa.....	31	Bethany, Mo.....	32
Cedar Rapids, Iowa.....	31	Jerome, Iowa.....	32
Mason City, Iowa.....	31	Cambridge, Iowa.....	32
Cairo, Ill.....	17	Ash Hill, Mo.....	28
Atchison, Kans.....	32	Valley Falls, Kans.....	37
Fort Scott, Kans.....	32	Hiattville, Kans.....	39
Leavenworth, Kans.....	32	Oskaloosa, Kans.....	34
Omaha, Nebr.....	32	Beatrice, Nebr.....	35
St. Joseph, Mo.....	32	Holton, Kans.....	35
Sioux City, Iowa.....	32	Fremont, Nebr.....	35
Madison, Wis.....	24	Watertown, Wis.....	35
Milwaukee, Wis.....	24	Beloit, Wis.....	30
Sheboygan, Wis.....	30	Port Washington, Wis.....	32
Burlington, Iowa.....	28	Afton, Iowa.....	32
Clinton, Iowa.....	28	Ames, Iowa.....	32
Davenport, Iowa.....	28	Adair, Iowa.....	32
Fort Madison, Iowa.....	28	Cincinnati, Iowa.....	32
Hannibal, Mo.....	23	Fayette, Iowa.....	32
Keokuk, Iowa.....	26	Allerton, Iowa.....	32
Quincy, Ill.....	23	Galt, Iowa.....	32

The rates to Cairo, Ill., St. Louis and Hannibal, Mo., and Quincy, Ill., have been induced by competition on the Mississippi River, and the rates to Chicago, Ill., Milwaukee and Madison, Wis., have been influenced by the competition of carriers serving New York and Philadelphia. In all other cases except those just mentioned the disparity between the rates to the more distant points and the intermediate points in the states of Arkansas, Missouri, Iowa, and Minnesota is relatively small and is due altogether to the routing of traffic via other than the short and rate-making routes. To every point shown in the left-hand column above except Chicago, Cairo, St. Louis, Madison, Milwaukee, and Quincy, there is a route via which the fourth section is observed.

On the route of the Texas & Pacific and Kansas City Southern to Kansas City the 32-cent rate made to Kansas City is observed as a maximum at nearly all intermediate points, and the carriers have signified their willingness to correct all departures from the fourth section on this route.

The rate of 32 cents applies to Spiro, Okla. From this point a branch line of the Kansas City Southern extends to Fort Smith, Ark., to which point a 28-cent rate is carried and discrimination exists against Spiro and other points south thereof. The 28-cent rate to Fort Smith is explained by the fact that the rate to Helena, Ark., induced by competition on the Mississippi River, is 12 cents, and the intrastate rate from Helena to Fort Smith is 13 cents. Sugar is brought to Helena, taken possession of by shippers, and reshipped from that point to Fort Smith under a total charge of 25 cents per 100 pounds. The testimony indicates that a large percentage of the sugar moving from New Orleans to Fort Smith moves via Helena.

We are of the opinion that the Kansas City Southern and its connections should be authorized to continue a lower rate on sugar from New Orleans to Fort Smith, Ark., and higher rates to intermediate points north of Texarkana, Ark.

We are also of the opinion that the petitioners herein should be authorized to continue lower rates to the Mississippi River points, Helena, Memphis, Cairo, St. Louis, and points north thereof, and higher rates to intermediate points in the states of Louisiana, Arkansas, Missouri, Iowa, and Minnesota on routes to the Mississippi River points.

We are also of the opinion that the carriers should be authorized to continue lower rates to Chicago, Milwaukee, and other points in eastern Illinois and Wisconsin and higher rates to intermediate points on routes to Chicago, Milwaukee, and other ports on the west shore of Lake Michigan.

The rate on sugar from New Orleans to Texas common points is 44 cents per 100 pounds in carloads, minimum weight 24,000 pounds. This rate produces a carload charge of \$105.60. The rate to points in eastern Oklahoma is 40 cents per 100 pounds, carload minimum 33,000 pounds. This rate produces a carload charge of \$132. The route to the Oklahoma points is through some of the Texas common points. The petitioners suggest that these rates are not in contravention of the fourth section on account of the fact that the carload charge to Texas common points is no higher than to the more distant Oklahoma points and that the unit is the carload. It is entirely conceivable, however, that some of these cars going to Texas points are loaded to a weight of more than 30,000 pounds, and in that case the charges assessed to intermediate points on such cars will be greater than on a car of like loading destined to more distant points. The propriety of a higher charge per 100 pounds for the smaller carload minimum is not in question. The 24,000-pound minimum has been made effective on shipments to Texas on account of the action of the Texas commission in fixing this minimum for intrastate shipments of sugar. This Texas sugar comes into active competition with New Orleans sugar at these Texas common points. The lines to Oklahoma points are in many instances the short lines and there is no sufficient justification for the maintenance of a rate to these points on the carload minimum named without making such rate and carload minimum the maximum to intermediate points in Texas.

THE ROUTE TO OMAHA.

The route afforded by the Louisiana Railway & Navigation Company, the Kansas City Southern, and the Chicago, Burlington & Quincy via Kansas City to Omaha is 1,061 miles in length, and via that route, as well as via the Missouri Pacific, there are no fourth-section violations. The rate to Omaha, as before stated, is 32 cents per 100 pounds. Traffic from New Orleans destined to Omaha, if turned over to the Chicago, Burlington & Quincy or to the Missouri Pacific at Kansas City, reaches Omaha without passing through higher-rated territory. If, however, this traffic is given to the Union Pacific or to the Rock Island at Kansas City, it is routed westerly through higher-rated Kansas points. The direct route of the Chicago, Burlington & Quincy, Kansas City to Omaha, is 194 miles in length; that of the Union Pacific is 308 miles; and that of the Rock Island via Belleville is 354 miles, and via Horton 371 miles. The rates to intermediate points are 40 cents to Topeka and Manhattan, Kans.; 38 cents to all points on the Rock Island between Holton and Beatrice; 35 cents to Lincoln; and reach a maximum at Belleville, Kans., of 52 cents.

We are of the opinion that the Union Pacific should be authorized to continue to engage in sugar traffic to Omaha and to continue higher rates to intermediate points, provided their present rates to the intermediate points are not exceeded.

We are also of opinion that the Rock Island should be authorized to continue lower rates on traffic to Omaha and higher rates to intermediate points on their route through Topeka, Horton, and Janssen, provided the present rates to these intermediate points are not exceeded.

We are also of the opinion that the Rock Island should be authorized to continue to handle traffic to Omaha via their route through Manhattan and Belleville, Kans., provided the rates to the intermediate points via that route are so corrected as not to exceed 40 cents per 100 pounds.

The Chicago, Rock Island & Pacific Railway Company receives traffic from its connections at Dallas, Fort Worth, and Houston, Tex., Howe, Okla., and various other points, and routes it through El Reno, Okla., Wichita and McFarland, Kans., and thence through Topeka to Kansas City or through Belleville and Lincoln to Omaha. The maximum rate carried to any point in Oklahoma and Kansas on the route to Kansas City is 40 cents. The maximum rate carried to points west of McFarland occurs at Belleville, Kans. The rate to this point is 52 cents. The route of the Rock Island, both to Kansas City and to Omaha, is markedly circuitous, and this carrier should be relieved from the requirements of the fourth section in order to handle this traffic. The rates, however, to points between Broughton, Kans., and Fairbury, Nebr., which vary from 43 cents at Fairbury to 52 cents at Belleville, appear to bear an unreasonable relation to the rates to the more distant point, Omaha.

We are of the opinion that this carrier should be authorized to continue the lower rates to Omaha via this route and higher rates to intermediate points, provided the rates to intermediate points between McFarland and Omaha on the route through Belleville are so corrected as not to exceed 40 cents per 100 pounds.

There are various points on the Rock Island to which attention has been directed in the testimony where the rates are in contravention of the provisions of the fourth section, one as against another. The carrier has signified an intention to correct these rates and they need not be discussed here.

This carrier routes traffic through Keokuk and Burlington, Iowa, to Davenport and Clinton, Iowa, and in so doing carries the traffic through higher-rated intermediate points. The routes used by the Rock Island are in all cases indirect, and in our opinion this carrier should be authorized to continue lower rates via Keokuk and Burlington to Davenport and Clinton than to the intermediate points.

THE MISSOURI PACIFIC.

This carrier, in connection with the Texas & Pacific or the Louisiana Railway & Navigation Company, operates routes to various points along the Mississippi River, notably Arkansas City, Ark., Helena, Ark., Memphis, Tenn., Cairo, Ill., and St. Louis, Mo. The rate to the first three points named is 12 cents and to Cairo and St. Louis 17 cents. These rates are materially less than to intermediate points, the justification for this practice being water competition on the Mississippi River.

In our opinion these carriers should be authorized to continue lower rates to these Mississippi River points than to intermediate points, provided the rates to intermediate points south of Arkansas City do not exceed 22 cents per 100 pounds, and south of Memphis do not exceed 24 cents per 100 pounds, and south of St. Louis do not exceed 28 cents per 100 pounds. There are certain stations on the Missouri Pacific to which no commodity rates are published upon sugar. The carrier has signified its intention of publishing commodity rates to all stations.

The rates to points on the Missouri Pacific between Little Rock, Ark., and Fort Smith, Ark., are higher than to Fort Smith. The rate to Fort Smith is 28 cents, while to certain intermediate points the rate is 30 cents. The grade of these rates is from east to west. In our opinion this violation of the fourth section should be corrected, and the rates to intermediate stations on this line should not exceed the rates concurrently applicable on like traffic to Fort Smith.

THE MIDLAND VALLEY RAILROAD.

This line extends from Hoya, Ark., to Wichita, Kans. Sugar from New Orleans is delivered by the Louisiana Railway & Navigation Company to the Kansas City Southern at Shreveport, La., and by that line to the Midland Valley Railroad Company at Panama, Okla. The rate to Wichita, Kans., is 40 cents. Certain violations of the fourth section exist in the rates to intermediate points, one as against another. The carrier has signified its intention of correcting, and the rate to Wichita will not be exceeded at intermediate points on this line.

MISSOURI, OKLAHOMA & GULF RAILWAY COMPANY, ALEXANDER NEW AND LOUIS ROSNER, RECEIVERS; MISSOURI, OKLAHOMA & GULF RAILWAY COMPANY OF TEXAS.

This line extends from Sherman, Tex., to Joplin, Mo. This is a comparatively new line, having been opened for traffic in 1912. It connects with the St. Louis Southwestern at Sherman and intersects the Texas & Pacific at Danison; the St. Louis & San Francisco at

Durant, Okla.; the Missouri, Kansas & Texas at Tupelo, Okla.; the Rock Island at Calvin, Okla.; the Fort Smith & Western at Dustin, Okla.; the Missouri, Kansas & Texas, the Midland Valley, and St. Louis & San Francisco at Muskogee, Okla.; the Missouri Pacific at Wagoner, Okla.; and the St. Louis & San Francisco at Fairland, Okla. This line has adopted the rates maintained by its competitors at these junction points and established rates to its intermediate local stations in harmony therewith. A 40-cent rate is carried to all stations from Red River, Okla., to Creekola, Okla. The rate to Muskogee, Verdark, Rex, Wagoner, and Yonkers is 35 cents. The rate to stations Murphy to Traber is 38 cents; to Miami, 37½ cents; to Lincolnville, 37 cents. To Baxter the rate is 41 cents, which the carrier has signified its intention of correcting to 36 cents, and the rate to Joplin, Mo., is 32 cents. In all cases the route of this line with its connections from New Orleans is markedly circuitous and this carrier should be authorized to continue the present rates to junction points and its present higher rates to intermediate points, with the exception of the rate to Baxter, which the carrier has signified its intention of correcting, as noted.

THE ATCHISON, TOPEKA & SANTA FE.

This carrier does not reach New Orleans, but can take traffic from New Orleans at various junction points in Texas and at Arkansas City, Kans., Tulsa, Okla., Joplin, Mo., or Coffeyville, Kans. Such traffic if destined to Kansas City or any of the points in Missouri reached by the Santa Fe must be carried through higher-rated to lower-rated territory. The routes of this petitioner to all points in Missouri and Illinois are markedly circuitous, and we are of the opinion that this petitioner should be authorized to continue lower rates on sugar to the territory in Missouri and Illinois and higher rates to intermediate points in Missouri, Kansas, and Oklahoma.

THE GULF, COLORADO & SANTA FE.

This carrier operates from the Red River to Purcell, Okla., and carries a 40-cent rate to Oklahoma points while carrying a 44-cent rate with a lower carload minimum to intermediate points in Texas. We have hereinbefore expressed the opinion that the rate made to the Oklahoma points should not be exceeded at the intermediate Texas points. This carrier will be required to adjust its rates in accordance with said finding.

THE CHICAGO GREAT WESTERN.

This line is a delivering carrier for sugar traffic from New Orleans. It can receive traffic from its connections at Chicago, Kansas City, Omaha, and various junction points in Iowa, Illinois, and Missouri.

The line of the Great Western from Chicago crosses the Mississippi River at Dubuque, Iowa; thence runs westerly to Oelwein and north-erly to Minneapolis and St. Paul. A branch line extends from Oelwein to Kansas City, and a third line extends from Oelwein to Omaha. On traffic received at Chicago the rates increase with distance to the first station south of St. Paul, Minn. The rate to St. Paul is 30 cents, and to nearly all of the intermediate points in Iowa the rate is 32 cents. Traffic received at Omaha destined to Chicago crosses the state of Iowa, passing through territory which takes a rate of 32 cents and on to Chicago, a 23-cent point. Such traffic moves against the grade of the rates and this carrier asks authority to depart from the requirements of the fourth section in order to handle traffic to Minneapolis and St. Paul, and also in order to handle traffic from west to east by both its lines across Iowa and Illinois.

The rate from New Orleans to St. Paul and Minneapolis has been made to meet the rail-lake-and-rail rates to these points from New York. Lines operating east of the Mississippi River carry this traffic to the twin cities without violating the long-and-short-haul clause. The lines operating through Iowa, however, can not observe the present Minneapolis rate as a maximum without reducing the rates to practically all points in Iowa and to all points in Missouri north of the Missouri River.

We are of the opinion that this carrier should be authorized to continue lower rates to Minneapolis and St. Paul than to intermediate points and to continue lower rates to Chicago and Illinois points, than to intermediate Iowa and Missouri points.

During the progress of the testimony taken in connection with this case the carriers signified their intention of correcting certain discrepancies between the rates to intermediate and more distant points. Reference has not been made to all of these discrepancies in this report, but the carriers will be expected to make these corrections in accordance with their statements.

The application also asks relief as to certain rates to points in Indiana, Michigan, and Ohio. No hearing was had respecting these rates and no opinion is herein expressed in regard thereto.

FOURTH SECTION APPLICATION NO. 8835.

Application No. 8835 of R. H. Countiss, agent, on behalf of carriers participating in the rates published in his tariff I. C. C. No. 978, and other tariffs, asks authority to establish rates on sugar in carloads, carload minimum 60,000 pounds, from San Francisco and beet-sugar-producing points in California, Utah, Nevada, Arizona, and Idaho to points in Missouri east of the Missouri River, and to points in Iowa and Illinois on a basis 23 cents per 100 pounds higher than the rates from New Orleans to the same points of destination.

Since the rates on sugar from New Orleans to points in the three states named grade from east to west, increasing from 23 cents at Chicago to 32 cents at the Missouri River, the effect of the above is a request for authority to establish a rate of 46 cents to Chicago while continuing a rate of 55 cents at the Missouri River and points west thereof. The proposed rates to points between Chicago and the Missouri River will vary between the two limits named. For example, the rate from New Orleans to Burlington, Davenport, and Clinton, Iowa, is 28 cents and the proposed rate from San Francisco to these points is 51 cents.

The record shows that the yearly per capita consumption of sugar in the United States is approximately 82 pounds. This includes sugar used for manufacturing purposes. The estimated personal per capita consumption is 54 pounds. The total consumption in the United States was not far from 3,600,000 tons during the year 1913. During that year the seven western states, California, Nevada, Utah, Idaho, Montana, Colorado, and Arizona, produced 573,000 tons of beet sugar and during the same year approximately 280,000 tons of cane sugar, mostly from the Hawaiian Islands, was brought to San Francisco, refined at and distributed from that point. A total of 853,000 tons of sugar was produced or refined in these states. This is enough to supply a population of 20,000,000 people, while the total population in the 11 western states—Washington, Oregon, California, Montana, Idaho, Nevada, Arizona, Wyoming, Utah, Colorado, and New Mexico—was but 6,825,821 persons, according to the census reports of 1910. It is obvious that a large part of the sugar produced or refined in these 11 states must find a market in the territory east thereof.

The rates made to the Missouri River have enabled the cane-sugar refiners at San Francisco and the beet-sugar producers in the western states to market some of this sugar in the territory bordering on the Missouri River. It is represented, however, that the rate of 23 cents made to Chicago from New Orleans and by the lake-and-rail lines from the Atlantic seaboard is so low as practically to prohibit the movement of western sugar to Chicago on the rates now in effect.

It is further represented that about 270,000 tons per year of sugar from the Hawaiian Islands now moves from the islands by steamer to the Isthmus of Tehuantepec, thence by rail across the isthmus, thence by steamer to New York where it is refined and from there distributed. The refiners at San Francisco and the carriers serving that point desire to secure a larger proportion of this Hawaiian sugar than they are now doing and in order to do so must have rates to consuming territory that will enable them to compete with the sugar refined at New York or New Orleans, or the Louisiana sugar, coming mainly from New Orleans.

This application is resisted by the lines serving the Atlantic seaboard, who presented a protest to the Commission against granting the application and asked for a hearing in order to present their objections. The hearing was held and attended by representatives of the eastern carriers and the eastern refining interests.

The eastern refiners fear, and the western refiners hope, that if the proposed reduction in the rates from California points is made the bulk of the 270,000 tons of Hawaiian sugar now coming to New York and refined at that point will be refined in San Francisco and distributed from that point.

The testimony of Mr. Lowry, who appeared for the eastern refiners, summarizes the situation as follows:

But Hawaii is now in a different position than it has been. The tariff reduction of 25 per cent took effect on the 1st of March and free sugar will become effective the 1st of May, 1916. As Hawaii up to the present has been able to sell her sugars based on the duty paid foreign sugars, any reduction in duty will mean a corresponding reduction of price to them. So free duty will mean a very low price, and the 25 per cent, so far, has made a reduction of about 35 cents a hundred in the price.

Hawaii is looking for ways to overcome the effect of that reduction in the tariff; and it evidently has occurred to them that one of the ways is to place a part or as much of the responsibility as possible for finding a market for the sugar on the railroad companies, and that is the reason they are urging the railroads to make a reduction in the rate—so they can get into the Chicago territory.

The eastern refiners and New Orleans refiners have distributed their sugar as far west as what is known as the Missouri River points, and as the rates to those territories seem very properly to be less from New York and New Orleans than from any other point, it would seem to me that that was the proper location for the distribution of the cane sugars from the east and from New Orleans.

The sugar supply to Chicago territory is now supplied by the Atlantic refiners and the New Orleans refiners, with the exception of the beet sugar that is used in that territory. The Hawaiian refinery in San Francisco has once or twice come into that territory, but not to any extent. They claim they can put in, I believe, 300,000 tons of sugar in that territory if this concession in rates is granted.

Now, that territory will not eat that much more sugar, and if they do get into that territory, it will, of course, mean that the sugar that now goes there either from east coast or New Orleans cane-sugar refineries will be displaced.

The representative of the interests of the eastern railroads asserted that the establishment of the 46-cent rate from San Francisco to Chicago, while permitting a certain amount of sugar to come to Chicago from western sources of supply, would of course displace an approximately equal amount of sugar now moving either from New Orleans or New York.

It was also asserted that the proposed reduction in the rate to Chicago is more than is necessary to equalize the traffic conditions; that the water rate from Hawaii to the Pacific coast is 13½ cents per 100 pounds and from Hawaii to the Atlantic coast 47½ cents per

100 pounds, making a difference of $34\frac{1}{2}$ cents per 100 pounds advantage to the Pacific coast, while the difference between the freight rate from the Atlantic coast to Chicago and the proposed rate from the Pacific coast to Chicago is but 23 cents. In other words, it is asserted that the proposed 46-cent rate to Chicago is lower than is necessary in order to meet the actual transportation competition.

It is asserted, however, by the western railroads and the western sugar refiners that the price of raw sugar in San Francisco day by day is regulated by the price of raw sugar in New York, and is 25 cents per 100 pounds less at San Francisco than at New York. The great bulk of the sugar that is used in the United States is Cuban sugar, which is brought into the United States through the port of New York and refined at that point. Out of the total consumption of sugar in the United States of 3,600,000 tons, more than 2,000,000 tons is Cuban sugar coming through the ports of New York or Philadelphia. The carriers assert that this relation between the price of raw sugar at New York and at San Francisco is the result not of traffic, but of trade conditions, but the record does not show what trade or other conditions produce this result.

It is suggested that the cost of refining in San Francisco may be somewhat higher than in New York, but no proof was submitted in support of such suggestion. It is urged, however, by both the western refiners and the western carriers that 23 cents per 100 pounds is the highest differential against these western refiners that will permit them to compete with the eastern and southern refiners in the sale of sugar in Chicago territory.

The relation between the rates from the three great distributing points, San Francisco, New Orleans, and New York, which exists at the Missouri River, has enabled these three distributing points to compete in this territory, one with another. The western sugars supply most of the territory lying west of the Missouri River. The eastern sugar supplies in a large measure the territory east of Chicago. The New Orleans sugar supplies in a large part the southern states. In the territory lying between Chicago and the Missouri River the western refiners desire to find a market for some of their product, and ask that the Commission authorize the carriers to waive the requirements of the fourth section, in order to permit the western carriers to compete for the haul of this sugar and the western refiners to market a portion of their sugar as against the refiners at New York and New Orleans.

The record shows that the eastern lake-and-rail carriers are absorbing certain storage charges at Chicago which have a market value of from 1 to 6 cents per 100 pounds, and that the carriers serving New Orleans are absorbing at Chicago certain delivery charges

amounting to as much as 2½ cents per 100 pounds. It is entirely clear that substantially the rate proposed from San Francisco to Chicago is necessitated by the actual competition found at that point if the western carriers are to bring any sugar to Chicago. The actual competition found at all points between Chicago and the Missouri River is consistently met at each point. The various carriers showed that on the lines of the Southern Pacific-Union Pacific and on the lines of the Atchison, Topeka & Santa Fe Railway there is a very large movement of empty cars eastbound more than sufficient to handle all of the additional sugar traffic that may possibly move by reason of the stimulus afforded by the establishment of these rates.

The rates to intermediate points west of the Mississippi River have been dealt with in the preceding portion of this report.

We are of the opinion that the petitioning carriers should be authorized to establish rates on sugar from San Francisco to Chicago and points taking Chicago rates from New Orleans 25 cents higher than the rates to the corresponding points from New Orleans, and to establish rates to other stations between Chicago rate territory and Missouri River points 23 cents higher than the rates concurrently applicable to the same points from New Orleans, provided the rates to other intermediate points west of the Missouri River are corrected as outlined in the preceding portions of this report. Orders will be issued in conformity with the opinions herein expressed.

FOURTH SECTION ORDER NO. 4136.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 21st day of July, A. D. 1916

IN THE MATTER OF APPLICATIONS NOS. 349, 675, 677, 1766, AND 8835 FOR RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE, AS AMENDED JUNE 18, 1910, WITH RESPECT TO RATES ON SUGAR.

RATES ON SUGAR.

One portion of application No. 349, filed by R. H. Countiss, agent, on behalf of carriers participating in the rates published in his tariff I. C. C. No. 926, and in other tariffs, asks authority to continue lower rates on sugar via certain routes from San Francisco, Cal., and from beet-sugar producing points in California to destinations on and east of the Missouri River than the rates concurrently applicable on like traffic to intermediate stations.

One portion of application No. 675, filed by F. A. Leland, agent, on behalf of the carriers participating in the rates published in his tariff I. C. C. No. 739, asks authority to continue lower rates on sugar from Colorado beet-sugar producing points to El Paso, Tex., than to intermediate points.

One portion of application No. 677, filed by F. A. Leland, agent, on behalf of carriers participating in the rates published in his tariff I. C. C. No. 778, asks authority to continue lower rates on sugar from New Orleans, La., and points taking the same rates to El Paso, Tex., than the rates concurrently applicable on like traffic to intermediate points.

Certain portions of application No. 1766, filed by W. P. Emerson, agent, on behalf of carriers participating in the rates published in his molasses and sirup tariff No. 1, I. C. C. No. 1, ask authority to continue lower rates on sugar from New Orleans, La., and various sugar-producing points in Louisiana to various points in the states of Arkansas, Illinois, Iowa, Kansas, and other states than the rates concurrently applicable on like traffic to intermediate points.

Application No. 8835, filed by R. H. Countiss, agent, on behalf of carriers participating in the rates published in his tariff, I. C. C. No. 978, asks authority to establish a rate of 46 cents per 100 pounds on

sugar in carloads, minimum weight 60,000 pounds, from San Francisco, Cal., and other sugar-producing points in California to Chicago, Ill., and to establish rates from the same points of origin to all points between the Missouri River and Chicago, Ill., 23 cents per 100 pounds higher than the present rates to the same points from New Orleans, La., while continuing higher rates to intermediate stations.

A public hearing having been held and full investigation of the matters and things involved in the above-described portions of these applications having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That that portion of Fourth Section Application No. 349 which asks authority to continue lower rates on sugar from San Francisco and other sugar-producing points in California, or in other states, to Colorado common points and the Missouri River points than the rates concurrently applicable on like traffic to intermediate stations in Colorado on the line of The Denver & Rio Grande Railroad Company be, and the same is hereby, denied, effective November 15, 1914.

It is further ordered, That that portion of Fourth Section Application No. 349 which asks authority to continue lower rates on sugar from San Francisco and other sugar-producing points in California, and in other states, to Trinidad, Colo., and other points east thereof, than the rates concurrently applicable on like traffic to intermediate points on the line of The Atchison, Topeka & Santa Fe Railway Company be, and the same is hereby, denied, effective November 15, 1914.

It is further ordered, That the Southern Pacific Company, El Paso & Southwestern Company, and The Chicago, Rock Island & Pacific Railway Company be, and they are hereby, authorized to continue lower rates on sugar from San Francisco and other sugar-producing points in California, and in other states, to the Missouri River than to stations intermediate thereto, provided that on or before November 15, 1914, the rates to stations west of Tucumcari, N. Mex., are so corrected as to not exceed the current rates to the Missouri River and that the rates to stations east of Tucumcari are so corrected as to not exceed the rates concurrently applicable to the Missouri River by more than 10 cents per 100 pounds.

It is further ordered, That that portion of Fourth Section Application No. 675 which asks authority to continue lower rates on sugar from beet-sugar producing points in the state of Colorado to El Paso, Tex., than the rates concurrently applicable on like traffic to intermediate points be, and the same is hereby, denied, effective November 15, 1914.

It is further ordered, That that portion of Fourth Section Application No. 677 which asks authority to continue lower rates on sugar from New Orleans, La., and points taking the same rates to El Paso, Tex., via the Galveston, Harrisburg & San Antonio Railway or via the Texas & Pacific Railway, than the rates concurrently applicable on like traffic to intermediate points be, and the same is hereby, denied, effective November 15, 1914.

It is further ordered, That The Galveston, Harrisburg & San Antonio Railway Company and The Atchison, Topeka & Santa Fe Railway Company, via their lines through Beaumont, Somerville, and Lubbock, Tex., Clovis and Belen, N. Mex., be, and they are hereby, authorized to establish the same rates on sugar from New Orleans to El Paso, Tex., that are concurrently effective on like traffic via more direct lines and to establish higher rates at intermediate points, provided the rates made to El Paso shall not be exceeded at Vaughn, N. Mex., and points east thereof, and that the rates to stations west of Vaughn shall not exceed the rates to El Paso by more than 10 cents per 100 pounds.

It is further ordered, That the petitioners in application No. 1766 be, and they are hereby, authorized to continue lower rates on sugar from New Orleans and points taking the same rates to points on and east of the Mississippi River than the rates concurrently applicable on like traffic from intermediate stations on the lines of Morgan's Louisiana & Texas Railroad & Steamship Company, New Orleans, Texas & Mexico Railroad Company, New Iberia & Northern Railroad Company, and The Texas Pacific Railway Company, provided the rates from such intermediate points do not exceed the current rates from New Orleans by more than 5 cents per 100 pounds.

It is further ordered, That The Missouri Pacific Railway Company and its connections be, and they are hereby, authorized to continue lower rates on sugar from New Orleans, La., and other sugar-producing points in the state of Louisiana to Arkansas City and Helena, Ark., Memphis, Tenn., Cairo, Ill., and St. Louis, Mo., than the rates concurrently applicable on like traffic to intermediate points, provided that on or before November 15, 1914, the rates to intermediate stations south of Arkansas City are corrected to not exceed 22 cents per 100 pounds; the rates to intermediate stations south of Memphis, to not exceed 24 cents per 100 pounds; and the rates to intermediate stations south of St. Louis, to not exceed 28 cents per 100 pounds.

It is further ordered, That the petitioning carriers in application No. 1766 be, and they are hereby, authorized to continue lower rates on sugar from New Orleans and points taking same rates or differentials higher to Chicago, Ill., and Mississippi River points north of St. Louis than to intermediate stations, provided the present disparity

between the rates to more distant and to intermediate points is not increased.

It is further ordered, That the Kansas City Southern Railway Company and its connections be, and they are hereby, authorized to continue a lower rate on sugar from New Orleans, La., to Fort Smith, Ark., than to intermediate points, provided the present rates to intermediate points are not increased.

It is further ordered, That the Union Pacific Railroad Company and its connections be, and they are hereby, authorized to continue lower rates on sugar from New Orleans, La., to Omaha, Nebr., than to intermediate points, provided their present rates to intermediate points are not exceeded.

It is further ordered, That the Chicago, Rock Island & Pacific Railway Company be, and it is hereby, authorized to continue lower rates on sugar from New Orleans, La., to Omaha, Nebr., than to intermediate points via its route through Topeka, Kans, Horton, Kans, and Jansen, Nebr., than the rates concurrently applicable on like traffic to intermediate points, provided the rates to intermediate points are not increased.

It is further ordered, That the Chicago, Rock Island & Pacific Railway Company be, and it is hereby, authorized to continue lower rates on sugar from New Orleans, La., to Omaha, Nebr., via its route through Manhattan and Belleville, Kans., than the rates concurrently applicable on like traffic to intermediate points, provided that on or before November 15, 1914, the rates to intermediate points are so corrected as to not exceed 40 cents per 100 pounds.

It is further ordered, That that portion of Fourth Section Application No. 1766 which asks authority to continue lower rates on sugar from New Orleans to Fort Smith, Ark., than the rates concurrently applicable on like traffic to intermediate stations on the line of the Missouri Pacific Railway Company be, and the same is hereby, denied, effective November 15, 1914.

It is further ordered, That the Missouri, Oklahoma & Gulf Railway Company and Alexander New and Louis Posner, receivers thereof, be, and they are hereby, authorized to continue the same rates on sugar from New Orleans, La., to Denison, Tex., Durant, Tupelo, Calvin, Duston, Muskogee, Wagoner, and Fairland, Okla., that are concurrently maintained on like traffic between the same points via the short lines, and to continue higher rates to intermediate stations, provided the present rates to intermediate points are not increased.

It is further ordered, That such portions of application No. 1766 as seek authority to continue lower rates on sugar from New Orleans, La., and points taking the same rates to stations in Oklahoma than

to intermediate points in Texas be, and they are hereby, denied, effective November 15, 1914.

And it is further ordered, That the petitioners in Fourth Section Application No. 8835 be, and they are hereby, authorized to establish rates on sugar from San Francisco, Cal., and other sugar-producing points in California and other states to Chicago, Ill., and points taking Chicago rates from New Orleans, which are 25 cents per 100 pounds higher than the rates concurrently applicable on like traffic from New Orleans to the same destinations, and to establish rates to points intermediate between the Missouri River and the points taking the Chicago rates, which are 23 cents per 100 pounds higher than the rates concurrently applicable on like traffic from New Orleans to the same destinations.

The Commission does not hereby approve any rates that may be continued or established under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any provision of the act.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

INTERSTATE COMMERCE COMMISSION.

INVESTIGATION AND SUSPENSION DOCKET No. 405.

TRANSCONTINENTAL COMMODITY RATES TO SAN JOSE,
SANTA CLARA, AND MARYSVILLE, CAL.

No. 6717.

SAN JOSE CHAMBER OF COMMERCE ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
ET AL.

Submitted November 16, 1914. Decided December 29, 1914.

As result of the decisions in *Santa Rosa Traffic Asso. v. S. P. Co.*, 24 I. C. C., 46, and 29 I. C. C., 65, transcontinental carriers filed tariffs canceling the application of terminal commodity rates to San Jose, Santa Clara, and Marysville, while continuing such rates to certain other California points. Upon complaint filed before the tariffs became effective; *Held*,

1. The filing and serving of a formal complaint against proposed increased rates does not relieve carriers of the burden of proof imposed upon them by law.
2. The duty of carriers to justify proposed increased rates includes the relative reasonableness as well as the reasonableness *per se* of the rates.
3. The amendment to the fourth section of the act to regulate commerce prohibiting increases in rates reduced to meet water competition can not be applied to the present transcontinental commodity rates to interior California points for reasons stated.
4. When the question of freight rates enters into the competition of cities and towns in any respect whatsoever, whether that competition is one for trade, industries, or population, complaints alleging unjust discrimination will be entertained by the Commission.
5. The proposed withdrawal of terminal commodity rates to San Jose, Santa Clara, and Marysville, which are not directly reached by Atlantic-Pacific ocean lines, while continuing such rates to other interior California points not directly reached by said ocean lines, would subject San Jose, Santa Clara, and Marysville to unjust discrimination. Suspended tariffs found not to have been justified.

J. E. Alexander, W. M. Hopkins, W. H. Carlin, W. S. Johnson,
and *A. H. Redington* for protestants in No. 405 and complainants in No. 6717.

John S. Partridge and *J. E. Rodgers* for the Contra Costa county interveners.

M. M. Jones for Oakland Chamber of Commerce.

G. J. Bradley for city of Sacramento.

Frank Lyon and Frank M. Hill for Fresno Traffic Association.

Fred H. Wood, E. W. Camp, C. W. Durbrow, A. S. Halstead, and A. P. Matthew for defendants.

REPORT OF THE COMMISSION.

McCHORD, Commissioner:

These cases are the outgrowth of the decisions of the Commission in *Santa Rosa Traffic Asso. v. S. P. Co.*, 24 I. C. C., 46, and 29 I. C. C., 65, which involved the adjustment of transcontinental commodity rates to Santa Rosa as compared with San Jose, Santa Clara, and Marysville, Cal. In the first of these cases the record showed, with respect to the physical conditions surrounding the delivery of transcontinental freight, that there was no dissimilarity sufficient to justify the defendants in giving "terminal" commodity rates to San Jose, Santa Clara, and Marysville and at the same time denying such rates to Santa Rosa. The defendants were therefore required, so long as they applied "terminal" commodity rates to San Jose, Santa Clara, and Marysville, to apply no higher rates to Santa Rosa.

Thereafter the case was reopened upon the petition of defendants and permission to intervene granted to San Jose, Santa Clara, and Marysville. Fresno, Cal., was also permitted to intervene with the contention that whatever character of relief was ultimately granted to Santa Rosa should likewise be granted to Fresno. After a thorough analysis of the new testimony presented, the Commission affirmed its prior conclusions with respect to the four original points and dismissed the intervening complaint of Fresno for want of proof. Although urged to do so, the Commission refused to indicate whether the discrimination found against Santa Rosa should be removed by extending to it terminal commodity rates, or by withdrawing such rates from San Jose, Santa Clara, and Marysville.

The defendants elected to remove the discrimination against Santa Rosa by withdrawing the application of terminal commodity rates to San Jose, Santa Clara, and Marysville. By tariffs filed to become effective April 1, 1914, the names of these three points were eliminated from the various lists of terminal points in California. On March 16, 1914, the Commission suspended the operation of these tariffs pending an investigation and, on the same date, postponed indefinitely its order in the *Santa Rosa* case.

In the meantime San Jose, Santa Clara, and Marysville had filed a formal complaint alleging that if the application of terminal commodity rates thereto was withdrawn they would be subjected to unjust discrimination in favor of 182 other named California points taking terminal rates. At the hearing an amendment was permitted naming eight other points alleged to complete the list of terminal

points in California. Thirty-nine towns located in Contra Costa county along San Pablo and Suisun bays, arms of San Francisco Bay, filed intervening petitions and introduced testimony at the hearing. By stipulation of the parties certain portions of the evidence presented in the *Santa Rosa cases* were made a part of the record in this case.

These cases were heard in June, 1914, before the opening of the Panama Canal, and consequently before anything definite was known regarding its probable effect upon the transcontinental situation. Between the date of the hearing and of the oral argument, however, this important event transpired, and at the argument the Commission was advised of the radical changes which had already taken place as result thereof. By agreement of the parties, a stipulation containing a statement of these changed conditions has been filed and made a part of the record herein. Among other things, this stipulation provides that the record in the supplemental hearing in Fourth Section Application No. 205, in so far as it deals with the withdrawal by the ocean lines of all inland absorptions, may be considered as part of the record in these cases.

While all the terminal point situations in California are involved in these proceedings in a general way, the immediate issues have to do with the commodity rates to San Jose, Santa Clara, and Marysville. These three points filed a formal complaint against an adjustment of rates that did not exist at the time and does not exist to-day, as the tariffs designed to bring about the adjustment complained of have been suspended. On the other hand, these tariffs were filed by the carriers to eliminate an unjust discrimination ordered removed by the Commission and, if allowed to become operative, would make effective commodity rates adjusted, and to be adjusted, in compliance with the conclusions reached in the *Intermountain Fourth Section cases, supra*, which conclusions have been sustained by the Supreme Court. *Intermountain Rate cases*, 234 U. S., 476. In this rather complex situation the complainants in No. 6717 insist that the burden of proof is on the carriers on account of the proposed increase in rates, while the carriers contend that it is on the interests represented by San Jose, Santa Clara, and Marysville as complainants in an original proceeding alleging unjust discrimination. As the adjustment of rates complained of by these three points did not exist at the time, the formal petition filed by them was more in the nature of a protest against certain proposed rates. The Commission acted upon that protest by suspending the tariffs. When the Commission enters upon an investigation of proposed increased rates, the propriety as well as the reasonableness of those rates is in issue, consequently the complaint in No. 6717

was served upon defendants for the purpose of putting them upon notice regarding this feature of the case. The propriety of proposed rates involves the question whether their becoming effective will subject the points directly affected to unjust discrimination in favor of any other points which, in this case, are the other points taking California terminal rates. Even though the postulate of the carriers—that the commodity rates to Santa Clara, San Jose, and Marysville resulting from the withdrawal of the terminal basis will be reasonable, considered merely as compensation for the services performed—be conceded, still it must be remembered that “a rate may be relatively unreasonable and yet contain none of the elements of absolute unreasonableness.” *New Pittsburgh Coal Co. v. H. V. Ry. Co.*, 26 I. C. C., 121, 125. The duty to prove that a certain rate is reasonable *per se* includes the duty to prove that it is relatively reasonable, i. e., that it does not operate to unjustly discriminate. It would therefore appear that the burden to show that the proposed adjustment of rates to San Jose, Santa Clara, and Marysville will not subject these points to unjust discrimination in favor of the other points taking terminal rates is on the carriers.

In this connection it may be stated that the only rates directly involved herein are certain westbound commodity rates. As result of the decision of the Commission in *Railroad Commission of Nevada v. S. P. Co.*, 19 I. C. C., 238, the class rates and certain of the commodity rates to the terminal points and to the points directly intermediate thereto are the same from the various eastern and central territories, consequently there is no dispute herein regarding the adjustment of these rates. Eastbound commodity rates are, for the most part, the same from the terminal and intermediate points and wherever different are relatively unimportant. It may also be stated that the other westbound commodity rates, for the most part, are the same to both terminal and intermediate points from Missouri River territory, but from territory east thereof these commodity rates to the intermediate points gradually get higher than those to the terminal points. This adjustment is brought about by the application of a zone basis extending from the Atlantic seaboard to the Missouri River on traffic to the terminal points, whereas the rates grade up from the Missouri River basis to the Atlantic seaboard basis on traffic to the intermediate points. In addition to this difference in the adjustment to the two classes of points, there are many commodities given commodity rates to the terminal points but charged class rates to the intermediate points. This statement describes the situation as it existed at the time of the hearing which, as before stated, was held before the opening of the

Panama Canal. The carriers now desire to make some changes in this adjustment, with respect to certain commodities, on account of developments incident to the opening of the canal, but the reasonableness of these proposed changes is being considered under their fourth-section applications.

Before proceeding to an analysis of the conditions surrounding the various points, it is necessary to dispose of a preliminary question which has been urged upon our attention by San Jose, Santa Clara, and Marysville. In 1910 Congress incorporated the following provision in the act:

Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

Upon this provision these three points base the contention that, as the carriers claim that the application of terminal rates thereto is due to the competition of the ocean lines, the carriers should not be permitted to increase those rates, as no change in conditions has taken place. They claim that the burden is on the carriers to show changed conditions sufficient to remove these increases beyond the pale of this amendment, that the carriers have not shown any changed conditions, and that, therefore, the terms of the law expressly prohibit the proposed increases.

But even if it be conceded that these three points were given terminal rates by the rail carriers as result of direct competition by the water carriers, this amendment can not be applied to them, as they were given terminal rates by rail many years prior to the passage of the amendment or even the original act to regulate commerce. The amendment was passed in June, 1910, and, by its express terms, applies only to rates thereafter reduced to meet water competition. The condition precedent to the application of the provision against allowing the rail rates to be increased is "whenever a carrier by rail *shall*, in competition with a water route or routes, *reduce* the rates," not whenever a carrier by rail *has*, in competition with a water route, *reduced* the rates. *Westbound Lake-and-Rail Knit Goods Commodity Rates*, 32 I. C. C., 54. The Commission, however, found in the *Intermountain Fourth Section cases*, *supra*, that "because of railroad competition the steamship lines which reach San Francisco now give these cities (interior cities) the same rates as are given to San Francisco."

We pass now to a consideration of the real issue involved in this proceeding. What is this issue? It is not primarily the reasonableness *per se* of the proposed rates to San Jose, Santa Clara, and Marys-

ville. The contentions of all interests in this case were directed wholly to the relative fairness or unfairness of applying one basis of rates to one group of points and another basis of rates to another group of points more or less similarly situated. The question of the reasonableness *per se* of rates was overshadowed by the question of the relation—the adjustment—of rates, and the principle or lack of principle applied in its determination. Indeed, much time was consumed at the hearing by an interesting debate between the representatives of rival cities and towns as to those of their number really entitled to terminal rates which, in the past, have been bestowed here and there as the fruits of railroad policy. There can be no question about the great commercial advantages which accrue to the town having these rates. In the contest for new factories and industries looking for locations on the Pacific coast, the town with these rates has an advantage which can not be overcome by its rivals not blessed with such rates. In one sense, the competition between towns for new factories and industries is more important than the competition between factories and industries already in those towns for trade. New factories mean more workers, more money, more houses, and more people in general. After all, the struggle between these Pacific coast cities and towns is essentially one for population. The record in these cases shows that although the fact that the railroads have published tariffs eliminating San Jose, Santa Clara, and Marysville from the list of terminal points has been known only a few months, already these three points have felt the disadvantage of the possibility of ultimately losing such rates. San Jose, for example, has been unable to secure certain new industries because of the uncertainty of its terminal rate position.

In this case, as in the *Santa Rosa case*, it is urged that competition "for trade" must exist before any unjust discrimination can result. This contention must be rejected for the reasons stated in the *Santa Rosa case*. It is a foregone conclusion that competition between jobbing houses and factories for trade can not exist without the jobbing houses and factories and, if a certain adjustment of freight rates prevents one town from securing the jobbing houses and factories in competition with another, a situation is presented which the act to regulate commerce was designed to correct. The rule is therefore laid down that when the question of freight rates enters into the competition of cities and towns in any respect whatsoever, whether that competition is one for trade, factories, or people, complaints alleging unjust discrimination will be entertained by the Commission.

In reviewing the circumstances and conditions surrounding the various points involved, comparisons will be made with the circum-

stances and conditions surrounding San Jose, Santa Clara, and Marysville. The physical situation of these three points has already been reviewed in the *Santa Rosa case*, and our findings in that respect need not be repeated here. Suffice it to state that these points are not situated on deep water and consequently the Atlantic-Pacific ocean lines do not make direct deliveries to them. The points with whose position the first comparison will be made are the exceedingly few points at which the railroads meet with direct competition with the ocean lines operating from the Atlantic seaboard to the Pacific coast. These points (San Francisco, Oakland, San Diego, San Pedro, Wilmington, and East Wilmington) are located directly on deep water and vessels of the ocean lines actually discharge Atlantic seaboard freight at their wharves. It is therefore seen that these points enjoy a position not possessed by any other points in California. While they were not represented at the hearing herein, some idea of their position may be gained from the following statement of San Francisco's position in the *Intermountain Fourth Section cases*:

The city of San Francisco insists most strenuously herein that if the carriers justify a variation from the requirements of the long-and-short-haul section by reason of the fact that ocean carriers can deliver Atlantic seaboard business at that port for a certain figure, it is unfair to extend the advantage which San Francisco enjoys to interior points not equally well situated.

Generally speaking, we are inclined to agree with this contention. These points are entitled under the law to all the advantages of their geographical locations. If the transcontinental carriers, in competition with the ocean lines, see fit to reduce transcontinental commodity rates to these particular points to lower than a normal basis, they can not be charged with unjust discrimination for not extending the same rates to other points not so advantageously situated as not being points of direct contact with Atlantic-Pacific ocean competition. We therefore find and conclude that the transportation of transcontinental commodity freight to these six points is surrounded by circumstances and conditions sufficiently dissimilar from those surrounding the transportation of like traffic to San Jose, Santa Clara, and Marysville, as not to present a case of unjust discrimination against the latter points.

Turning our attention to the other points taking terminal rates, it appears that these points are located on and around San Francisco Bay and around Los Angeles. The carriers made no showing to justify the discrimination in rates against San Jose, Santa Clara, and Marysville in favor of the other interior points now granted terminal rates. The only evidence introduced along this line was by the Contra Costa county towns which are located on or

near San Pablo and Suisun bays, arms of San Francisco Bay. The vessels of Atlantic-Pacific ocean lines do not land at these ports, but the vessels of other ocean lines (from Hawaii and Pacific coast points) dock and discharge freight at most of them. Atlantic seaboard traffic brought in by the Atlantic-Pacific ocean lines consigned to these points is transferred to lighters or smaller steamers in San Francisco Bay and, until the opening of the Panama Canal, the ocean lines absorbed the charges of the lighters and smaller steamers. In some instances this traffic has been turned over to the rail lines at San Francisco, in which event the rail charges also were formerly absorbed by the ocean lines. With respect to these absorptions, there has been and is no difference in the situation at San Jose, Santa Clara, and Marysville. As found in the *Intermountain Fourth Section cases*, the ocean lines gave the interior points the same water rates as San Francisco because the railroads forced them to do so by giving them the same rail rates as San Francisco. Most of these interior points were designated as California terminals at times when the ocean carriers were absolutely controlled, or their influence neutralized, by the rail lines; in other words, when there was no real controlling and independent water competition. Although some of the interior points were designated as "terminal points" after the incorporation of the amendment to the act above referred to, no showing was made in this proceeding that they were so designated by rail as the result of controlling water competition.

As before stated a stipulation of the changes resulting from the opening of the Panama Canal has been filed as part of the record herein. This stipulation shows that the ocean lines have not only materially reduced their rates but, what is more significant in this case, have discontinued the practice of absorbing the inland charges both on the originating and the delivering end of this traffic. Formerly these water carriers imported the potentiality of their competition into the interior from the Pacific seaboard by giving the San Francisco basis of rates to certain interior points. But, as hereinbefore explained, this was done by the ocean lines to meet the competition of the rail lines, which, in pursuance of a somewhat undefined policy, had arbitrarily selected certain interior points to which they applied the terminal basis of rates. To-day these conditions no longer obtain. Not desiring to come within the purview of the amendment of August 12, 1912, giving the Commission jurisdiction over transportation "by rail and water through the Panama Canal," the Atlantic-Pacific ocean lines now confine the application of their rates from port to port. In other words, by the ocean lines, the terminal basis of rates applies to the ports of call only, the rates paid by the interior points being the ocean rates to the ports plus

the local rates therefrom to destination. As we understand it, the ocean lines insist upon handling their business as a purely local transaction from port to port, and will not accept traffic on through bills of lading to or from the interior points. This is probably due to the fear on their part that the traffic, if handled on through bills of lading, would constitute transportation "by rail and water," and therefore be subject to the jurisdiction of this Commission and to the requirements of the act.

In consideration of all the facts appearing of record, it is the finding and conclusion of the Commission that the withdrawal of terminal commodity rates to San Jose, Santa Clara, and Marysville, while continuing such rates to other interior California points, would subject San Jose, Santa Clara, and Marysville to unjust discrimination, and that therefore the respondents have not justified the proposed tariffs. It follows that the suspended tariffs must be canceled and an order to this effect will be entered.

The matter of the extension of terminal commodity rates to interior California points is under consideration by the Commission on carriers' Fourth Section Applications Nos. 205, etc., and will be disposed of there.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 29th day of December, A. D. 1914.

INVESTIGATION AND SUSPENSION DOCKET No. 405.

TRANSCONTINENTAL COMMODITY RATES TO SAN JOSE, SANTA CLARA, AND MARYSVILLE, CAL.

No. 6717.

SAN JOSE CHAMBER OF COMMERCE ET AL.

v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY ET AL.

It appearing, That on March 16, 1914, the Commission entered upon an investigation concerning the propriety of the increases and the lawfulness of certain rates, charges, regulations, and practices stated in schedules designated as follows: R. H. Countiss, agent, supplement No. 26 to I. C. C. No. 952, supplement No. 17 to I. C. C. No. 956, supplement No. 3 to I. C. C. No. 974, supplement No. 7 to I. C. C. No. 975, supplement No. 5 to I. C. C. No. 976, supplement No. 5 to I. C. C. No. 978, I. C. C. No. 989; C. C. McCain, agent, supplement No. 26 to I. C. C. No. 6, I. C. C. No. 14; Eugene Morris, agent, supplement No. 26 to I. C. C. No. 344, I. C. C. No. 465, and subsequently ordered that the operation of certain parts of said schedules be suspended until January 30, 1915;

It further appearing, That a full investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the carriers respondent herein and designated in said schedules be, and they are hereby, notified and required to cancel, on or before January 30, 1915, the rates and charges stated in the items of the schedules specified in said orders of suspension.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

INTERSTATE COMMERCE COMMISSION.

FOURTH SECTION APPLICATIONS Nos. 205, 342, 343, 344, 349, 350,
AND 352.

COMMODITY RATES TO PACIFIC COAST TERMINALS AND INTERMEDIATE POINTS.

IN THE MATTER OF APPLICATIONS FOR RELIEF FROM
THE PROVISIONS OF THE FOURTH SECTION OF THE
ACT TO REGULATE COMMERCE, AS AMENDED JUNE
18, 1910, WITH RESPECT TO COMMODITY RATES FROM
EASTERN DEFINED TERRITORIES TO PACIFIC COAST
TERMINALS AND INTERMEDIATE POINTS.

Submitted November 23, 1914. Decided January 29, 1915.

1. Carriers authorized to establish certain carload commodity rates from Missouri River territory to Pacific coast terminals lower than to intermediate points, provided the rates contemporaneously applicable on like traffic to intermediate points do not exceed 75 cents per 100 pounds.
2. Carriers authorized to establish certain carload commodity rates from points in zones 2, 3, and 4 to Pacific coast terminals lower than to intermediate points, provided the rates from Missouri River territory to intermediate points are not exceeded by more than 15, 25, and 35 cents per 100 pounds from points in zones 2, 3, and 4, respectively.
3. Carriers authorized to establish certain less-than-carload commodity rates from Missouri River territory to Pacific coast terminals lower than to intermediate points, provided the rates contemporaneously applicable on like traffic to intermediate points do not exceed \$1.50 per 100 pounds on articles classified as first or second class and \$1.25 per 100 pounds on articles classified as third or lower class in western classification.
4. Carriers authorized to establish certain less-than-carload commodity rates from points in zones 2, 3, and 4 to Pacific coast terminals lower than to intermediate points provided the rates to intermediate points do not exceed the rates contemporaneously applicable from the Missouri River territory to the same points by more than 25, 40, and 55 cents per 100 pounds from points in zones 2, 3, and 4, respectively.
5. Suggestion made that carriers readjust rates to back-haul points by either adding to the full terminal rates something less than the full locals from terminals to destination, or by the publication of basing rates to the terminals less than the terminal rates to be used in connection with local rates from the terminals in determining rates to intermediate points.

Charles Donnelly for Northern Pacific Railway Company.

H. A. Scandrett for Union Pacific system.

T. J. Norton for Atchison, Topeka & Santa Fe Railway Company.

Fred H. Wood for Southern Pacific system.

Allan P. Matthew for Western Pacific Railway Company.

H. F. Bartine for Railroad Commission of Nevada.

F. A. Jones and *W. P. Geary* for Arizona Corporation Commission.
Oscar L. Owen for State Corporation Commission of New Mexico.
Ross Beason for Traffic Bureau of Utah.

J. A. Blomquist for Public Utilities Commission of the state of Idaho.

A. E. Helm for Public Utilities Commission of the state of Kansas.

U. G. Powell for Nebraska State Railway Commission.

J. F. Shaughnessy for Railroad Commission of Montana.

F. P. Gregson for Associated Jobbers of Los Angeles.

Byron Waters for Freight Bureau of Interior Counties of Southern California.

Seth Mann for San Francisco Chamber of Commerce.

G. J. Bradley for Merchants' & Manufacturers' Association of Sacramento.

J. C. Lincoln for Merchants' Association of New York City.

Ira B. Mills for Railroad & Warehouse Commission of Minnesota.

E. J. McVann for Commercial Club of Omaha.

J. B. Campbell for Spokane Merchants' Association and Spokane Chamber of Commerce.

Davis, Kellogg & Severance for Minneapolis Civic & Commercial Association and St. Paul Association of Commerce.

Frank M. Hill for Fresno Traffic Association.

C. E. Childe for Traffic Bureau of Sioux City Commercial Club.

R. D. Sangster for Commercial Club of Kansas City, Mo.

H. G. Krake for Commercial Club of St. Joseph, Mo.

A. F. Versen for Business Men's League of St. Louis.

Harry T. Burns for Rice-Stix Dry Goods Company of St. Louis.

H. C. Barlow for Chicago Association of Commerce.

J. H. Henderson for Iowa Board of Railroad Commissioners.

Martin Van Persyn for Wholesale Groceries Exchange of Chicago.

R. L. Hearon for Colorado Fuel & Iron Company.

W. D. Hurlbut for Wisconsin Pulp & Paper Manufacturers' Association.

J. M. Belleville for Pittsburgh Plate Glass Company.

A. E. Singleton for Portsmouth Steel Company of Portsmouth, Ohio.

Carl F. Rowe for Marshall-Wells Hardware Company of Duluth.

B. H. O'Meara for Douglas Company of Cedar Rapids, Iowa.

F. B. Montgomery for International Harvester Company of America.

J. Keavy for Indianapolis Chamber of Commerce.

O. Van Brunt for Simmons Hardware Company of St. Louis.

W. S. Orilly for Hargadine-McKittrick Dry Goods Company of St. Louis.

Colin O. H. Fyffe for Illinois Manufacturers' Association.

SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

The various transcontinental carriers, through their agent, R. H. Countiss, filed with the Commission prior to February 17, 1911, certain applications for relief from the provisions of the fourth section as to rates on commodities from eastern defined territories to Pacific coast terminals and intermediate points. These applications sought authority to continue the then current practice of these carriers of making commodity rates to the Pacific coast lower than to intermediate points. Hearings were held at Washington in March and April, 1911, at which the carriers presented testimony and argument in support of their requests for relief. The relief sought was opposed by representatives of the shipping interests of the intermediate territory in some of the states traversed by these transcontinental lines. The testimony was to a large extent general in character. The carriers sought to show that all the commodity rates from all of the territory of origin involved were influenced by the competition of water-and-rail carriers operating from the east coast of the United States by water to the Isthmus of Tehuantepec, by rail across the isthmus, and thence by water to the Pacific coast. The testimony did not establish whether or not the rates upon some of these commodities were influenced by water competition to a greater degree than those upon others; and the reports of the Commission, 21 I. C. C., 329 and 400, dealt with the subject as a whole. For the purpose of disposing of these applications the Commission divided the United States into five zones as follows:

(The transcontinental groups hereinafter described are as specified in tariff of R. H. Countiss, agent, I. C. C. No. 929.)

Zone No. 1 comprises all that portion of the United States lying west of a line called line No. 1, which extends in a general southerly direction from a point immediately east of Grand Portage, Minn.; thence southwesterly, along the northwestern shore of Lake Superior, to a point immediately east of Superior, Wis.; thence southerly, along the eastern boundary of transcontinental group F, to the intersection of the Arkansas and Oklahoma state line; thence along the west side of the Kansas City Southern Railway to the Gulf of Mexico.

Zone No. 2 embraces all territory in the United States lying east of line No. 1 and west of a line called line No. 2, which begins at the international boundary between the United States and Canada, immediately west of Cockburn Island, in Lake Huron; passes westerly through the Straits of Mackinaw; southerly, through Lake Michigan to its southern boundary; follows the west boundary of transcontinental group C to Paducah, Ky.; thence follows the east side of the Illinois Central Railroad to the southern boundary of transcontinental group C; thence follows the east boundary of group C to the Gulf of Mexico.

Zone No. 3 embraces all territory in the United States lying east of line No. 2 and north of the south boundary of transcontinental group C and west of line No. 3, which is the Buffalo-Pittsburgh line from Buffalo, N. Y., to Wheeling, W. Va.; thence follows the Ohio River to Huntington, W. Va.

Zone No. 4 embraces all territory in the United States east of line No. 3 and north of the south boundary of transcontinental group C.

Zone No. 5 embraces all territory south and east of transcontinental group C.

The order denied the carriers authority to continue lower commodity rates from points in zone 1 to the Pacific coast than to intermediate points, but authorized the maintenance of higher rates to the intermediate points than to the coast on traffic originating in zones 2, 3, and 4 by 7, 15, and 25 per cent, respectively.

Appeal was taken to the Commerce Court from the decision of the Commission, and on November 9, 1911, that court set aside the order of the Commission, *A., T. & S. F. Ry. Co. v. U. S.*, 191 Fed., 856. Upon appeal from this decision to the Supreme Court of the United States a decision reversing the decision of the Commerce Court was announced on June 22, 1914, *Intermountain Rate cases*, 234 U. S., 476. In July, 1914, the transcontinental carriers, through R. H. Countiss, their agent, filed with the Commission a petition asking—

1. That the effective date of Fourth Section Order No. 124, of June 2, 1911, be extended until October 1, 1914, in order to enable carriers to publish, file, and make effective rates to conform with the requirements of the order, except on commodities shown in a list attached to the application and designated as schedule C, and that as to rates on those commodities the effective date of the order be extended until January 1, 1915.

2. To modify the order so that the zone boundary lines provided therein will conform to the territorial boundary lines approved by the Commission after hearing and investigation in *Transcontinental Rates from Group F*, 28 I. C. C., 1, and now published in the west-bound transcontinental tariffs, such modification being necessary to permit the uniform application of rates from eastern points of origin to Pacific coast terminals and intermediate points.

3. To grant the interested carriers a hearing concerning the rates on the commodities enumerated in schedule C, it being the purpose of the various carriers to show that as to these rates the conditions justify a greater degree of relief than is afforded under the original order.

Responsive to this petition the Commission extended to October 1, 1914, the effective date of its order, except as to the rates on commodities listed under schedule C, and extended the effective date of the order as to such rates until January 1, 1915.

The description of the east boundary of zone 1 was modified by orders of the Commission of July 10 and September 28, 1914, to read as follows:

(a) On traffic to the California terminals the east boundary of zone No. 1 begins at the intersection of the north boundary of the state of Minnesota with the northwestern shore of Lake Superior; thence northwesterly along the shore of Lake Superior

to a point immediately west of Duluth, Minn.; thence following the west boundary of transcontinental group D, as shown in transcontinental tariff No. 1-M, of R. H. Countiss, agent, I. C. C. No. 952, to its intersection with the northern boundary of transcontinental group E; thence following the east boundary of group E to a point at or near Norwood, Minn.; thence following an imaginary line through Hutchinson, Minn., to Wilmar, Minn.; thence via the line of the Great Northern Railway through Benson, Morris, Herman, Yarmouth, and Moorhead, Minn.; thence along the line of the Great Northern Railway to Fargo, N. Dak.; thence to Yarmouth, Minn.; thence to Newton, N. Dak.; thence via the line of the Chicago & North Western Railway to Oakes, N. Dak.; thence via the Minneapolis, St. Paul & Sault Ste. Marie Railway to Monango, N. Dak.; thence via the Chicago, Milwaukee & St. Paul Railway to Edgeley, N. Dak.; thence via the Chicago, Milwaukee & St. Paul Railway to Monango; thence via the Minneapolis, St. Paul & Sault Ste. Marie Railway to Wishek, N. Dak.; thence via an imaginary line through Linton, N. Dak., Mobridge and Gettysburg, S. Dak.; thence via the Chicago & North Western Railway to Pierre, S. Dak.; thence following the north bank of the Missouri River to its intersection with the west boundary of transcontinental group F; thence following the west boundary of group F to the southeast corner of the state of Kansas; thence along the west boundary of the state of Missouri to the northwest corner of the state of Arkansas; thence along the west side of the Kansas City Southern Railway to the Gulf of Mexico.

(b) On traffic to the north Pacific terminals the east boundary of zone No. 1 begins at the intersection of the north boundary of the state of Minnesota with the northwest shore of Lake Superior; thence follows the northwest shore of Lake Superior to a point immediately east of Superior, Wis.; thence follows the east boundary of transcontinental group F, as described in transcontinental tariff 4-K, of R. H. Countiss, agent (I. C. C. No. 984), to Asbury, Mo.; thence along the west boundary of the state of Missouri to the northeast corner of the state of Oklahoma; thence along the north boundary of Oklahoma and the east boundary of the state of New Mexico to the southeast corner of New Mexico; thence westerly along the south boundary of New Mexico to El Paso, Tex.

A hearing was held at Chicago beginning on October 6, 1914. Briefs have been filed, arguments heard, and the case now stands for disposal.

The commodities named in schedule C, the rates now applicable, and the rates which the carriers petition to establish to California terminals are shown in the appendix to this report.

The proposed rates to the north Pacific coast on these items are usually but not invariably the same as to the California terminals.

It was asserted by the petitioners:

1. That the commodities named originate in large volume on the Atlantic seaboard.

2. That these commodities are adapted to water transportation, and in fact move in considerable quantities from the Atlantic seaboard to the Pacific coast by water.

3. That the rates made by the water carriers on these commodities are extremely low and necessitate correspondingly low rates by the rail carriers from eastern seaboard territory.

4. That the low rates so imposed from the eastern seaboard to the Pacific coast necessitate correspondingly low rates from the Buffalo,

Detroit, Chicago, St. Louis, and Missouri River territories (a) in order to permit the rail movement of traffic from these points to the Pacific coast in competition with the same or similar commodities moving from the Atlantic seaboard; (b) in order to comply with the requirement of the fourth section which prohibits carriers from making a greater charge from intermediate points than from more distant points, the more distant points in this case being located at or near the Atlantic seaboard.

5. That since the opening of the Panama Canal the water carriers have materially reduced their rates, shortened the time for transportation, increased the frequency of their sailings, and materially added both to their tonnage capacity and to the actual tonnage obtained.

The shipping interests of the intermountain territory oppose the application for further relief, some upon the ground that the relief afforded by Fourth Section Order No. 124 is sufficient; others upon the ground that the carriers have not proposed any new basis of rates to the intermediate points, the present rates to which they allege to be unreasonable and unjustly discriminatory.

The application is supported by shipping interests in Chicago, Duluth, Minneapolis, St. Paul, St. Louis, and the Missouri River cities, upon the ground that if further relief be not afforded to the carriers upon this traffic the present policy of the carriers of maintaining rates from intermediate territory to the Pacific coast no higher than from the Atlantic seaboard will be defeated and the business built up by these interior shipping interests with purchasers upon the Pacific coast will be diverted to the advantage of industries near the Atlantic seaboard. The list of commodities concerning which additional relief is sought should be examined in the light of the testimony furnished at this hearing to ascertain whether or not the averments made have been supported by competent proof. It may be remarked at the outset that the request has been withdrawn with respect to 27 of the items which have been transferred to schedules A or B and on which rates are published in accordance with the original order.

Of the commodities shown in schedule C, 961,768 tons moved from transcontinental territories A and B to the Pacific coast during the calendar year 1913. Of this 422,359 tons, or approximately 44 per cent, moved by water, and 539,409 tons, or 56 per cent, by rail. The record does not show the total tonnage moving from all territories to the Pacific coast for that year. It was shown in the former hearings that in 1906 the total tonnage moving from all territories by rail to the Pacific coast was approximately 3,500,000 tons. The 361,800 tons of schedule C commodities moving from territory along or contiguous to the Atlantic seaboard constitutes a large percentage of the

business to the Pacific coast. There are a few of these commodities which either do not originate in any considerable volume on the Atlantic seaboard or do not appear to move by water to any great extent. Such commodities are covered by items 1695-A, window glass; 3650, rice; 3845, saws; 3860, saw plates; 4095, stacker ladders, etc. These five items should be transferred to other schedules and rates should be published thereon in accordance with the original order. In respect to all the commodities in schedule C, except those which we have noted, the carriers have shown that a heavy tonnage is moving from the Atlantic seaboard to the Pacific coast, and in large part by water.

In connection with the third allegation, that the rates by water on these articles from the Atlantic seaboard to the Pacific coast have been extremely low and have necessitated correspondingly low rates by rail, we show below the rates by rail and by water on certain representative articles in this schedule, the rates published by the water lines prior to and subsequent to the opening of the Panama Canal, and the proposed rates of the rail lines, and also the tonnage by sea and by rail for the year 1913, from transcontinental territories A and B:

Commodity.	Quoted sea rate prior to opening of canal.		Quoted by sea routes Sept. 5, 1914.		Present rail rate.		Proposed rail rate.		Tonnage from territories A and B during year 1913.	
	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	L.C.L.	C. L.	Sea.	Rail.
Canned goods.....	85	55-60	.....	50	.....	55-95	.....	75	10,713	4,921
Boiler compound.....	90	60	.....	50	.....	75	.....	75	200	672
Cotton-factory sweepings.....	100	75	.....	75	.....	110	.....	95	1,457	335
Earthen and stone ware.....	100	100	100	100	150	95	150	.....	737	5,301
Electric goods, insulators, etc..	90	55	75-80	35-40	.....	90	.....	80	646	1,307
Telephone line material.....	90	55	80	35	.....	55	.....	75	217	2,859
Hardware and tools.....	100	100	100	100	160-190	125	150	.....	14,896	5,635
Hemp.....	100	55	.....	55	.....	75	.....	75	541	34
Hose.....	120	85	120	85	160-175	85	150	145-90	120,066	3,177
Iron and steel articles.....	75-85	45-60	75-85	30-60	.....	85	125	75	1,128	157,005
Ink.....	90	90	75	75	150	.....	.....	.....	6,164	206
Crowbars, chains, etc.....	85	55	75-85	40-55	125-135	85	125	75	1,079	3,211
Liquors.....	100	100	100	60	175	.....	150	.....	7,061	6,357
Lye.....	85	55	.....	40	.....	75	.....	75	1,079	5,637
Oilcloth, linoleum, etc.....	100	60	100	60	.....	110	.....	75	7,061	1,343
Paint.....	90	65	.....	50	120	95	115	75	17,051	2,096
Paper, articles of.....	80-100	55-75	80-100	50-60	175-190	130-130	135	95	19,257	20,129
Pickles.....	65-100	50-75	.....	.....	.....	100	.....	100	1,852	1,690
Soap.....	90	55	.....	50	130	80	130	80	5,611	4,198
Twine and cordage.....	100	50	.....	50	.....	95	.....	75	5,318	762
Wire, insulated.....	100	50	.....	.....	.....	110	.....	75	7,459	2,060
Wire fencing.....	85-90	50-65	.....	30-40	175	90	125	75	5,802	20,638
Coal.....	.....	.....	.....	.....	.....	42	.....	.....	116,819	7,384

¹The 55-cent rate will not apply from Atlantic seaboard.

The articles selected, with the exception of coal, are fairly representative, and include about one-half of the tonnage of these schedule C commodities moving from territories A and B to the Pacific coast. It will be noted that in nearly every instance the proposed rail rate is materially higher than the corresponding ocean rate. In some in-

stances the difference has been so great as to turn a large percentage of the traffic to the boat lines. This is particularly true in the case of canned goods, cotton-factory sweepings, hardware, and tools, hemp, liquors, oilcloth, linoleum, etc., paint, twine, and cordage. It may be regarded as established that the rates which the rail lines have maintained on the schedule C items from territories A and B could not have been materially higher than they have been if these lines were to retain any considerable percentage of the traffic.

We will next consider the allegation of the carriers that the low rates necessitated from Atlantic seaboard territory to the Pacific coast can not be exceeded from Pittsburgh, Chicago, or the Missouri River territories, (1) because these territories are intermediate, (2) because traffic will not move therefrom to the Pacific coast except on rates approximately equal to the rates made from the Atlantic seaboard. That provision of the fourth section of the act which permits the carriers by application to seek relief from its requirements presupposes a condition that will lead the carriers to seek such relief. No such condition here exists. The carriers are not asking authority to make lower rates from the Atlantic seaboard than from intermediate points, for the very obvious reason that were the rates so adjusted the Pacific coast would soon be supplying itself from the Atlantic seaboard with many of the articles which are at present shipped from the interior territory. By maintaining higher rates from the intermediate territory than from the Atlantic seaboard the railroads would concentrate a large part of the business on the Atlantic seaboard in territory contiguous to the sea. The carriers have therefore asked for no such relief. Can it be said that their rates should be so made, and that they should be asking for such authority? What interest would be served by lower rates from the eastern seaboard to the Pacific coast than from Chicago? Clearly not the carriers' interests. Any such adjustment of rates would be altogether adverse to the interests of the carriers and would almost inevitably result in their hauling much freight from the seaboard to the Pacific coast which they now haul from intermediate points such as Chicago, a shorter distance, at a less expense. The same policy would result also in serious injury to many of the industries located at interior points which have, under equal rates, built up a large and profitable business on the Pacific coast. Many articles are produced and manufactured both in the interior and on the Atlantic seaboard. Only a certain quantity of these manufactured articles can at present be consumed on the Pacific coast. Any rate adjustment that tends to stimulate the movement of these articles from the Atlantic seaboard will to the same extent decrease the movement from Chicago and other intermediate points. The principal beneficiaries of such an adjustment of rates would be the shippers on or near the Atlantic seaboard to

whom would be given a monopoly of many articles in the markets of the Pacific coast. It is clear that the carriers' interest, and the interests of the major part of the public served, lie in the direction of the maintenance of rates from the intermediate points no higher than from the Atlantic coast. The intent of the fourth section and the aim of the Commission in enforcing its provisions is to reduce discriminations, not to augment them. Discriminations of vast importance against intermediate points of origin would be created by the establishment of lower rates from the Atlantic seaboard to the Pacific coast than from intermediate points.

Fourth Section Order No. 124 recognized the existence of a wide blanket of rates as to points of origin extending from the Missouri River to the Atlantic Ocean on traffic to the Pacific coast, while it did not provide for such blanketing of rates to points in the intermediate territory. The order has the effect of bringing about lower rates to this territory from the Missouri River and Chicago than from Pittsburgh and the Atlantic seaboard. The intermediate territory of destination affected, however, is in the main remote from the Pacific coast and uninfluenced by rates to the coast, and no reason appears why the rates to this territory should not increase with distance as the original order contemplates. New York can not justly claim that because Chicago is given the same rate as New York to the Pacific coast New York should be given the same rate as Chicago to the intermediate points. The claim that New York should be permitted to land freight at Salt Lake City, Reno, or Phoenix at the same rate as Chicago is no more justified than the claim that New York should be permitted to land freight at Omaha, Kansas City, or Minneapolis at the same rate as Chicago.

Upon the whole record we are of the opinion that these carriers are justified in the maintenance of a blanket as to points of origin on rates to the Pacific coast, and that this practice carries with it no necessity or obligation of blanketing the same territory of origin in establishing rates to intermediate points.

This intermountain territory should be distinguished from that territory lying along the Pacific coast, approximately 200 miles in width, to which rates from the east have been or may be arrived at by adding to the terminal rates either local rates or arbitraries proportional thereto from the terminals to the destinations. To many points in this coast territory the same rate will apply from all points east of and including the Missouri River, but such rate will exceed the coast terminal rate by the local or arbitrary charge from the terminal to the destination.

Since the opening of the Panama Canal the water carriers have materially reduced their rates, shortened the time of transportation, in-

creased the frequency of sailings, added to their tonnage capacity, and greatly added to the tonnage secured of this coast-to-coast freight. The table of 24 representative commodities hereinbefore shown supports in part this showing of reduced rates. These rates appearing in the table are as of September 5, 1914. At the hearing on October 6 it was shown that the rates on many commodities had been further reduced since September 5. Among such commodities were canned corn, from 50 to 45 cents; canned meats, from 50 to 45 cents; cotton-factory sweepings, from 75 to 65 cents; towels and toweling, from \$1 to 60 cents; cotton drills, from \$1 to 60 cents; certain hardware items, from \$1 to 80 or 85 cents; pulleys, from \$1 to 90 cents; rail and track material, from 55 to 50 cents; sledges, wedges, and mauls, from 60 to 45 or 50 cents; canvas hose, less than carload, \$1.20 to \$1 or \$1.05; canvas hose, carload, from 85 to 75 or 80 cents; balls, rough forged, 40 to 30 cents; butts and hinges, less than carload, from 90 to 70 cents; butts and hinges, carload, from 60 to 50 cents; castings, carload, from 80 to 30 cents; various hardware items, from 40 to 30 cents; cast-iron pipe, from 40 to 35 cents; turnbuckles, from 40 to 30 cents; wrapping paper, carload, from 60 to 45 or 50 cents; stamped ware, less than carload, from \$1.25 to \$1; stamped ware, carload, from \$1 to 80 cents; tin, pig and slab, carload, from 50 to 30 cents; wire fencing, from 40 to 30 cents.

It was shown that there are in service between the Atlantic and Pacific coasts 49 ships, with a tonnage capacity of over 380,000 tons, as appears by the following table:

Summary of service via water lines between Atlantic and Gulf ports and Pacific coast ports since opening of Panama Canal.

Steamship line.	Vessels.	Total capacity.	Frequency of sailings.	Time in transit to San Francisco.	Remarks.
		<i>Tons.</i>	<i>Days.</i>	<i>Days.</i>	
American Hawaiian S. S. Co., from New York to San Diego, Los Angeles harbor, San Francisco, Portland, Seattle, Tacoma.	26	260,000	5	23	Have declared intention to make Gulf ports, east-bound, and Charleston, S. C., westbound, soon.
Luckenbach S. S. Co., from New York and Philadelphia, to Los Angeles harbor, San Francisco; cargo for North Pacific coast ports transhipped at San Francisco.	8	40,500	10	27	Will make Gulf ports early in October, both directions.
W. R. Grace & Co. (Atlantic & Pacific S. S. Co.), from New York to Los Angeles harbor, San Francisco, Puget Sound.	4	30,000-40,000	15-20	20	
Emery S. S. Co. (Boston & Atlantic S. S. Co.), from Boston to Los Angeles harbor, San Francisco.	2	17,000	35-40	27	
Swayne & Hoyt, from New York to Los Angeles harbor, San Francisco.	3	15,000	30	23	
Budden & Christman, from New York to Los Angeles harbor, San Francisco.	6	27,000	15	24	Announce will make Gulf ports, including Mobile, New Orleans, and Galveston.

¹ Effective Oct. 6.

It was shown that the total tonnage moving by water from the Atlantic to the Pacific coast and to the Hawaiian Islands for the year 1911 was 397,974 tons; for 1912, 451,582 tons; for 1913, 434,115 tons; while for the month of September, the first full month after the opening of the Panama Canal, the tonnage from the Atlantic coast to the American Pacific coast ports was 77,915 tons. While the movement by the Panama route for a month may not be a reliable index as to what may be expected as the result of a year's operation, it is indicative of a greatly increased activity on the part of the water carriers. The testimony shows also a reaching out by these water carriers to territory from which heretofore they have drawn but little if any traffic and the movement by water of various commodities that heretofore have moved almost exclusively by rail. Prominent instances of these are the following: A shipment of 32 cars of cast-iron pipe from Birmingham, Ala., by rail to New Orleans, thence by water to the Pacific coast; a shipment of paper bags from Sandy Hill, N. Y., via New York and ocean; shipments of catsup from Rochester, N. Y., via New York and ocean; 140 cars of structural iron originating in various parts of Pennsylvania; 50 cars of wire fencing from various points in Pennsylvania; 1,200 tons of rails from Lorain, Ohio; 653 pieces of wrought-iron pipe from Wheeling, W. Va.; from 10,000 to 15,000 tons of wrought-iron pipe from Youngstown, Ohio.

It is evident from the whole record that, whatever may have been the degree of competition in the past between the rail carriers and the water carriers as to the rates on these articles concerning which additional relief is now sought, we are witnessing the beginning of a new era in transportation between the Atlantic and the Pacific coasts. To secure any considerable percentage of this coast-to-coast traffic rates on many commodities must be established by the rail lines materially lower than those now existing.

It has been suggested that the construction of the Panama Canal by the government of the United States is indicative of a governmental policy to secure all of this coast-to-coast business for the water lines, and that no adjustment of rates by the rail lines should be permitted which will take away traffic from the ocean carriers which normally might be carried by them. This suggestion, however, loses force under the consideration that the Panama Canal is but one of the agencies of transportation that the government of the United States has fostered between the Atlantic coast and the Pacific. The government has from the beginning of railroad construction in the United States encouraged their construction and operation by private capital and enterprise. Some of these transcontinental lines would not have been built had it

not been for the liberality the government extended to them at the time of their construction. As we view it, the Panama Canal is to be one of the agencies of transportation between the east and the west, but not necessarily the sole carrier of the coast-to-coast business. If the railroads are able to make such rates from the Atlantic seaboard to the Pacific coast as will hold to their lines some portion of this traffic with profit to themselves, they should be permitted so to do. The acceptance of this traffic will add something to their net revenues, and to that extent decrease, and not increase, the burden that must be borne by other traffic. It will also give the shippers at the coast points the benefits of an additional and a competitive service.

Few, if any, of these intervening interests are really opposing the petition of these carriers for relief. The intermountain territory, however, is earnestly protesting against the request of the carriers for relief as to the coast rates without adequate provision at the same time for fair, just, and reasonable rates to intermediate intermountain points.

We are of the opinion that these carriers should be permitted to compete for this long distance traffic so long as it may be secured at rates which clearly cover the out-of-pocket cost. The lowest proposed rate from Atlantic seaboard territory is 65 cents per 100 pounds, applicable on cast and wrought iron pipe in carloads of 40,000 pounds. This gives a per car earning of \$260, and upon a basis of a 3,200-mile haul yields a car-mile revenue of 8.1 cents and a ton-mile revenue of 4.05 mills. Since the average ton-mile revenue of these carriers is approximately 9 mills on freight traffic, it is probable that a rate which produces 45 per cent as much as the average pays more than the out-of-pocket cost and therefore does not impose a burden upon other traffic. None of the rates proposed appear, therefore, to be open to the charge that they pay less than the out-of-pocket cost. Many of them are low as applied to the total haul from the Atlantic seaboard, but they are not for that reason low as applied to the haul from the Missouri River. Omaha is nearly 1,500 miles west of New York City, and it is urged that rates that yield some profit over a haul of 3,200 miles must yield a good profit when the traffic is hauled but 1,800 or 1,900 miles. The Union Pacific-Southern Pacific line from Omaha to San Francisco is 1,786 miles in length. The line of the Santa Fe from Kansas City to Los Angeles is 1,809 miles; the Northern Pacific line from St. Paul to Seattle is 1,911 miles. The average haul from the Missouri River territory to the Pacific coast is approximately 1,850 miles. The rate of 65 cents on iron pipe in carloads of 40,000 pounds yields a revenue for this haul of 14 cents per car-mile and a ton-mile revenue of 7 mills. The lowest rate proposed from the

Missouri River to the coast is 42 cents per 100 pounds on coal in carloads, carload minimum 60,000 pounds. This rate, applied to a haul of 1,850 miles, yields a car-mile revenue of 13.6 cents and a ton-mile revenue of 4.5 mills.

Another relatively low rate from the Missouri River to the coast is that on pig iron, in carloads of 80,000 pounds, of 45 cents per 100 pounds. On a haul of 1,850 miles this affords a car-mile revenue of 19 cents and a ton-mile revenue of 4.85 mills. Examination of the list of commodities and the proposed rates shows one item, coal, on which a rate of 42 cents is in effect; one item, pig iron, on which a rate of 45 cents is proposed; nineteen items on which a 55-cent rate is proposed; three items on which a 60-cent rate is proposed; six items on which a 65-cent rate is proposed; and one item on which a 70-cent rate is proposed. The most important of these items are those on which a rate of 55 cents is proposed. On fourteen of these items the rate is based on a carload minimum of 80,000 pounds, and of the other five items two are based on a carload minimum of 60,000 pounds, one on a minimum of 50,000 pounds, and two on a minimum of 40,000 pounds. The 55-cent rate and 80,000-pound minimum yield a loaded car-mile revenue of 23.7 cents and a ton-mile revenue of 5.9 mills for a haul of 1,850 miles, while the 40,000-pound minimum yields a car-mile revenue of 11.8 cents and a ton-mile revenue of 5.9 mills. The following table shows the average receipts per loaded car-mile and per ton-mile on some of these western lines for the years ended June 30, 1913 and 1914. The figures are compiled from the annual reports of the carriers named to the Interstate Commerce Commission:

Name of road	Year	Average receipts	
		Per ton-mile	Per loaded car-mile
		Cents.	Cents.
Northern Pacific Ry. Co.....	1913	0.830	16.840
	1914	.854	16.708
Great Northern Ry. Co.....	1913	.708	17.617
	1914	.794	17.813
Chicago, Milwaukee & St. Paul Ry. Co.....	1913	1.798	13.304
	1914	.908	13.304
Southern Pacific Co.....	1913	1.186	31.090
	1914	1.171	30.79
	1914	1.167	30.000
Atchafalpa, Topeka & Santa Fe Ry. Co.....	1913	1.080	30.79
	1914	1.057	16.025
Western Pacific Ry. Co.....	1913	.771	13.000
	1914	.788	14.001

¹ Based on figures which include returns of Chicago, Milwaukee & Puget Sound Railway Company for the six months ended December 31, 1912, at which time the railway property, franchise, and equipment was sold to the Chicago, Milwaukee & St. Paul Railway Company.

² Based on figures which include \$792,000 freight revenue and 4,862,107 ton-miles by ferry steamers.

³ Based on figures which include \$792,000 freight revenue from ferry steamers.

⁴ Based on figures which include \$684,079.70 freight revenue and 3,500,900 ton-miles by ferry steamers.

⁵ Based on figures which include \$684,079.70 freight revenue from ferry steamers.

This shows a per ton-mile average of approximately 9 mills.

The two main territories of destination involved are described as follows: (1) All that territory lying along these main trunk lines to which rates are made or will be made by combination on the coast terminals. This may be called the back-haul territory. (2) Territory lying east of that just described. Shippers in this latter territory justly claim a right to reasonable rates as measured by the usual standards by which the reasonableness of rates may be tested. The 55-cent rate and carload minimum of 80,000 pounds yield a higher car-mile revenue and a much lower ton-mile revenue than the average returns of any of these lines. Their average load per car varies from 16 tons on the Atchison, Topeka & Santa Fe to 23 tons on the Great Northern. These heavy cars of 80,000 pounds minimum carry at least double the average load on these systems. Having in mind all that has been shown in the record respecting the circumstances under which this traffic is carried, we are of the opinion that these 55-cent rates and other carload rates yielding a less revenue than 8 mills per ton-mile for the haul from the Missouri River to the Pacific coast may be considered as relatively low. This, however, should not apply to coal or pig iron. We believe that on these commodities the rate should not be considered unduly low for this haul unless yielding a revenue of less than 5 mills per ton-mile. A revenue of 8 mills per ton-mile for a haul of 1,850 miles corresponds with a rate of 75 cents per 100 pounds.

No relief will be given as to rates from the Missouri River to the Pacific coast which are 75 cents or more per 100 pounds. Upon commodities in this list, other than coal and pig iron, which move to the terminals on rates of less than 75 cents per 100 pounds, the rates to the second territory above described should be graded with distance, reaching a maximum near the point where the terminal rate added to the local or proportional rate back meets the rate of 75 cents. Relief from the long-and-short haul rule of the fourth section as to rates from the Missouri River to the Pacific coast terminals will be afforded upon the following commodities in this list: Item 485, chloride of calcium; 2030 $\frac{1}{2}$, various iron and steel articles; 2065, 2335, 2340, various iron and steel articles; 2075-A, billets, blooms, ingots, etc.; 2110, bolts, nuts, washers, etc.; 2250-C and 2245-C, nails and spikes, etc.; 2260-A, pipe fittings and connections; 2265, cast-iron pipe and connections; 2270-A, wrought-iron pipe; (new number), pipe, cast iron and cast-iron connections for same, minimum weight 80,000 pounds; (new number), wrought-iron pipe, minimum weight 80,000 pounds; 2080 and 2085, iron and steel articles; 2115, 2370-B, 2430-B, box straps, shingle bands, bailing ties; 2375, shoes—horse, mule, and oxen; 2445, tubing, open seam, n. o. s.;

3325, strawboard, n. o. s.; 3960, ship and boat spikes; 4045-A, soda ash; 4375-A, tin and terne plate; 4780-B, wire and wire goods; 4795-D, wire, iron, plain, galvanized, etc.; 4825, wire rods; 4885, zinc (spelter); 1340, steel rails; 1341, rail fastenings.

If, however, the rate from the Missouri River to the Pacific coast ports upon any commodity covered by the above-described items is hereafter increased so as to equal or exceed 75 cents per 100 pounds, such rate must be carried as a maximum to intermediate points. Upon all other schedule C commodities the rates made from Missouri River territory to the Pacific coast terminals should not be exceeded at intermediate points.

We are not unmindful of the showing made by the Nevada Railroad Commission that the divisions accruing to the Southern Pacific west of Ogden on traffic to Nevada points are arrived at by adding to that company's proportion of the through rate to the coast whatever amount the rate to the Nevada point may exceed the through rate and the contention that these divisions, considered as proportional rates from Ogden, are excessive. All of this territory is entitled to the benefit of its location on a main line of railway of high traffic density and general efficiency. It can not, however, be concluded that a rate is unreasonable solely because one of the carriers participating therein receives an apparently excessive division of that rate. The territory in Nevada, as well as that in Oregon, Washington, California, and Arizona on the direct lines of these transcontinental carriers, must in this case be dealt with as a whole, and the Commission can not here go further than to prescribe certain maximum rates to intermediate points upon traffic which moves to the terminals at lower rates, as a condition of acceptance of the relief granted from the long-and-short-haul rule. The fact that rates to the terminals are unusually low does not justify the maintenance of rates to intermediate points that are unreasonably high, but a lower rate to the terminal being fixed of necessity, rates to intermediate points, which are higher, do not necessarily unjustly discriminate against these points.

CARLOAD COMMODITY RATES FROM POINTS IN ZONES NOS. 2, 3, AND 4.

Zone No. 2 is approximately 500 miles in width, extending from the Missouri River to and including Chicago, Ill. Using as a base carload commodity rates from the Missouri River to points in the intermountain territory, the question before us is: By how much should these rates be exceeded from the eastern boundaries of these zones?

In *Railroad Commission of Nevada v. S. P. Co.*, 19 I. C. C., 238, the Commission established class rates from Omaha, Mississippi River, Chicago, Detroit, Buffalo, Pittsburgh, and New York to the

western half of Nevada. The class rates from Chicago exceed the class rates from the Missouri River by the following, in cents per 100 pounds:

Class.....	1	2	3	4	5	A	B	C	D	E
Differentials.....	40	34	28	17	14	17	14	11	10	9

The class rates from Buffalo and Pittsburgh exceed the class rates from the Missouri River by the following amounts:

Class.....	1	2	3	4	5	A	B	C	D	E
Differentials.....	70	59	46	29	24	29	24	20	17	15

The class rates from New York exceed the class rates from the Missouri River by:

Class.....	1	2	3	4	5	A	B	C	D	E
Differentials.....	100	84	66	42	34	42	34	28	34	22

These class rates have been in effect since May, 1910, and have not been the subject of complaint.

From an examination of the list of commodities it appears that 90 per cent of the articles are rated in western classification as fourth or fifth class, in carloads, and more than 60 per cent are rated as fifth class, with a lower carload minimum than is here proposed. The differences by which the fifth-class rates from Chicago, Pittsburgh and New York exceed the rates from the Missouri River are 14, 24, and 34 cents, respectively, and the differences by which the fourth-class rates from Chicago, Pittsburgh, and New York exceed the rates on the corresponding class from the Missouri River are 17, 29, and 42 cents, respectively. We are dealing here with a set of commodity rates materially lower than the rates on the classes to which these commodities belong, and the differentials to be applied from Chicago, Pittsburgh, or New York should bear a reasonable relation to the rates from the Missouri River, having consideration for the additional and total hauls involved.

We are of the opinion that the petitioners' carload rates upon the commodities shown in schedule C, except those covered by the 27 items and the 5 items above referred to, and which have been taken out of schedule C as per pages 616 and 617, *infra*, and with the further exceptions of coal and pig iron, should be made from Chicago, Pittsburgh, and Atlantic seaboard territories to the intermountain points by adding to the rates on the same commodities from the Missouri River to the same destinations differentials not exceeding 15 cents from Chicago, 25 cents from Pittsburgh, and 35 cents from the Atlantic seaboard. The differential of 15 cents from Chicago over the Missouri River permits a ton-mile revenue of 6 mills for the haul of 500 miles from Chicago to Missouri River; 25 cents from Pittsburgh over the Missouri River rate permits a ton-mile revenue

of 5 mills for the haul of approximately 1,000 miles from Pittsburgh to the Missouri River; and 35 cents from the Atlantic seaboard over the Missouri River permits a ton-mile revenue of 4.66 mills for the haul of nearly 1,500 miles from New York to the Missouri River. These differentials correspond approximately with the fifth-class differentials and the rates applied from points in zone 2 should increase from the western to the eastern boundary of that zone, not exceeding at Mississippi River points the fifth-class differential of the Mississippi River over the Missouri River. They should increase from the western toward the eastern boundary of zone 3, not exceeding at the Cincinnati and Detroit points the amounts by which the fifth-class rates from these points exceed the Missouri River fifth-class rates.

Analysis, item by item, of the carload rates on these articles now in effect and examination of the rates proposed to the terminals shows that the above method of establishing rates to intermediate points will result in lower rates thereto in the majority of instances than would have resulted under the percentages named in Fourth Section Order No. 124, using as a base the present terminal rates.

Below are shown the present rates, in cents per 100 pounds, to the terminals on six representative commodities in this list that move in large volume to both the intermediate points and the Pacific coast ports. There are also shown the present rates on these items to Reno, Nev., the rates that will be applied to Reno under the above-described disposition, and the rates to Reno that would be applied under the percentages named in the original order, using as a base the present terminal rate.

	Canned goods.	Structural iron and steel.	Bolts, nuts, washers, etc.	Nails and spikes.	Iron castings.	Paint.
Present rates to terminals from Missouri River, Chicago, Pittsburgh, and New York.....	85-90	80	80	85	80	95
Present rates to Reno from—						
Missouri River.....	114	92	92	92	92	106
Chicago.....	133	106	106	106	106	125
Pittsburgh.....	148	117	117	117	117	136
New York.....	153	122	122	122	122	146
Proposed rates to Reno from—						
Missouri River.....	75	75	75	75	75	75
Chicago.....	90	90	90	90	90	90
Pittsburgh.....	100	100	100	100	100	100
New York.....	110	110	110	110	110	110
Rates to Reno resulting from using present rates to terminals and applying thereto the percentages used in Fourth Section Order No. 124, from—						
Missouri River.....	85-90	80	80	85	80	95
Chicago.....	90-95	85.6	85.6	91	85.6	102
Pittsburgh.....	98-103.5	92	92	98	92	109
New York.....	106-112.5	100	100	106	100	119

Nearly 200,000 tons of these articles moved by rail from trans-continental territories A and B to Pacific coast ports during the

year 1913. The revenue derived by the carriers from this movement was approximately \$3,000,000. Under the proposed rates to the terminals the same volume of traffic would earn not more than \$2,500,000. The record does not show what volume of traffic moved to the intermediate territory. The articles above named, however, are used in large volume at the intermediate points. The same tonnage moving to the terminals, if moved to intermediate points in Washington, Oregon, Nevada, and Arizona, would yield the carriers under the present rates at least \$4,600,000. Under the rates above authorized the revenue from such traffic would be approximately \$4,000,000. Under the assumption that the carriers availed themselves of the authority conveyed by Fourth Section Order No. 124, and at the same time reduced the rates to the terminals to the figures above named, the revenue from the same amount of traffic moving to the intermediate points would not exceed \$2,900,000. Were the carriers required to observe the percentages named in the original order on these commodities they would be confronted with the alternative of either reducing the rates to intermediate points to a level that would result in great reductions in revenue, or continuing rates to the Pacific coast ports which are not low enough to allow the traffic to move by the all-rail lines. In that event their choice would be governed by the relative attractiveness of the respective tonnages involved. The very great reductions in their revenue to intermediate points brought about by an attempt on their part to meet the water competitive rates at the terminals would in many instances cause their retirement from the terminal traffic and its total abandonment to the water carriers. Such a course of action would not benefit the intermediate points of destination in the least and would result in serious injury to many intermediate points of origin.

Examination of the tariffs, Countiss's I. C. C. Nos. 996 and 997, effective November 15, 1914, establishing commodity rates to the Pacific coast and intermediate points under the percentages authorized by the Commission in the original order, shows that the carload rates to the coast were increased on many commodities. These commodities on which the rates were increased include the following articles: Agricultural implements; hay presses; beehives and honey section frames; slate blackboards; buckwheat; cereals and cereal products; cotton linters; earthenware; chinaware; stoneware; majolica ware, etc.; animal and poultry foods; chairs, settees, and stools; lawn mowers; tallow, in packages; bottles, flasks, glasses, and jars; lanterns and switch lamps.

These increases in the coast rates, with consequent likelihood of loss in terminal traffic, were doubtless made in order to more nearly pre-

serve under the percentage system the level of the then current rates to intermediate territory. The relief afforded from the fourth section should be sufficient in each instance to permit the carriers to continue to compete for the terminal traffic so long as it may be secured at rates that are sufficient to yield a revenue in excess of operating cost. The maximum of public benefit from the fourth section will result from the enforcement of conditions that will tend to preserve and promote, and not to diminish or retard, competition. Looking at the country as a whole, but more especially at the great producing and consuming areas in the interior, it is believed that what is herein proposed will best accomplish that end under prevailing conditions.

LESS-THAN-CARLOAD COMMODITY RATES.

There are about 50 items in this list on which less-than-carload commodity rates apply from all eastern defined territories to the Pacific coast. These less-than-carload rates vary from \$1.75 to \$1 per 100 pounds. Eighty-five per cent of the commodities move on rates of from \$1.25 to \$1.50 per 100 pounds. The table of rates quoted by the water lines from the Atlantic seaboard to the Pacific coast shows that the competition of these lines for the less-than-carload business has been and is likely to be just as severe as is the competition on the carload rates. The substantial reductions proposed by the rail carriers on these less-than-carload items evidence the recognition on the part of the traffic managers of these railroads of the controlling nature of this competition. The following list of representative articles shows the present and proposed less-than-carload rates of the rail lines, and, so far as it could be obtained, the corresponding less-than-carload rates of the water lines:

Commodity.	Present rail rate.	Proposed rail rate.	Water rate.
Hardware and tools.....	\$1.75-\$1.90	\$1.50	\$1.00
Lawn mowers.....	1.75	1.50	1.00
Nails and spikes.....	1.30	1.00	1.30
Liquors.....	1.75	1.50	1.00
Turnbuckles.....	1.75	1.50	1.00
Paint.....	1.30	1.15	1.50
Paper, articles of.....	1.75-1.90	1.35	1.00
Stamped ware.....	1.70	1.70	1.25
Iron tacks.....	1.75	1.25	1.30
Wire fencing.....	1.75	1.25	1.40

¹ Carload.

We should first determine what, if any, relief should be afforded in the rates from the Missouri River to the Pacific coast on these commodities. We have afforded relief on all articles except coal and pig iron where the proposed carload rate from the Missouri River to the Pacific coast is less than 75 cents and denied relief where the rate is

75 cents or more. This less-than-carload list is more varied in character than is the carload list, and comprises many articles in all the first three classes and a few in the fourth class. The 75-cent rate used as a minimum on the carload commodities is approximately 60 per cent of the rate on the class to which these commodities belong. These carload rates, however, apply on very large carloads of from 60,000 to 80,000 pounds, while the carload minima to which the class rates usually apply are from 30,000 to 40,000 pounds. This being the case, a lower rate may properly apply on the higher carload minimum. These less-than-carload commodities, however, move under exactly similar circumstances as do the articles moving under class rates, and the rates from the Missouri River to the Pacific coast on these commodities are from 55 to 80 per cent of the class rates on the same articles. The class rates on the first four classes from the Missouri River to the western part of Nevada and Arizona are, respectively, \$2.50, \$2.17, \$1.85, and \$1.58, while the commodity rates to the Pacific coast range from \$1.75 to \$1.

We are of opinion that relief should be authorized on all articles rated as first or second class on which the proposed less-than-carload commodity rates from the Missouri River to the Pacific coast are less than \$1.50 per 100 pounds, and on all articles rated as third class or lower on which the proposed less-than-carload commodity rates are less than \$1.25. Relief will be denied in all other cases.

The less-than-carload commodity rates of \$1.50 and \$1.25 per 100 pounds on these articles are a little in excess of 60 per cent of the class rates applicable on the same articles from the Missouri River to the western portion of the intermountain territory. They bear approximately the same proportion to the carload commodity rate of 75 cents per 100 pounds as is shown in the relation between the less-than-carload and the carload class rates from and to the same points on these commodities.

If, however, the rates from the Missouri River to the Pacific coast ports upon any commodities covered by the above-described items are hereafter increased so as to equal or exceed \$1.50 per 100 pounds on articles classified as first or second class and \$1.25 per 100 pounds on articles classed as third class or lower, such rates must be carried as maxima to intermediate points.

LESS-THAN-CARLOAD COMMODITY RATES FROM CHICAGO, PITTSBURGH, AND NEW YORK.

To determine what less-than-carload commodity rates should be applied from Chicago, Pittsburgh, and New York to intermountain territory it is necessary to determine by what differentials the less-than-carload rates from the Missouri River to the same territory may be exceeded from Chicago, Pittsburgh, or New York. The majority

of the items in this list are divided about equally between the three higher classes. The amounts by which the class rates from Chicago, Pittsburgh, and New York to the western part of Nevada exceed the rates from the Missouri River are as follows:

Class.	Chicago over Missouri River.	Pittsburgh over Missouri River.	New York over Missouri River.
1.....	\$0.40	\$0.70	\$1.00
2.....	.34	.49	.84
3.....	.26	.46	.66
4.....	.17	.29	.43

The differentials by which these less-than-carload commodity rates from the Chicago, Pittsburgh, and New York territories to the intermountain territory should exceed the rates from the Missouri River ought to be fairly proportional to the additional hauls involved and ought not to exceed 25 cents from Chicago, 40 cents from Pittsburgh, and 55 cents from the Atlantic seaboard.

COMMODITY RATES TO POINTS IN TERRITORY NO. 1.

We have heretofore described this territory as lying along the main lines of these railways immediately east of the terminals. For the purpose of this report this will be called the back-haul territory. There are a great many points intermediate to the Pacific coast terminals to which the rates now applicable are arrived at by taking the rates to the coast terminals and adding thereto the local rate from the terminal to destination. This practice of making the rates to these points as above described has caused dissatisfaction and complaint on the part of shippers in this territory. The most that can be claimed for such a system of rate making is that it is an expedient for arriving at a rate, rather than that it rests upon any just principle of rate making founded upon equitable considerations.

The rate to the coast is low in many cases for the haul involved, but when to that low rate is added a local in some cases equal to 50 per cent or more of the terminal rate it does not necessarily follow that the result is a proper rate. We have, however, in the preceding portions of this report in effect prescribed maximum rates on these commodities to the western boundary of the intermountain group. For example, the maximum carload rate which these carriers can apply from the Missouri River on certain iron articles will be 75 cents per 100 pounds so long as lower rates are carried to the coast terminals. The maximum carload rates to intermediate points on the same articles will be 90 cents from Chicago, \$1 from Pittsburgh, and \$1.10 from New York. Viewed from the standpoint of service rendered, the rates to points close to the terminals, were they higher than the combinations on the terminals or as high as to the inter-

mountain points, might still be regarded as lower than might be charged under other conditions. These points, however, in back-haul territory are affected by the competition from the coast terminal cities to a greater degree than are the points farther east. There is ground for contending that for that reason they are entitled to a different basis of rate making which will enable them in some degree to compete with the coast cities. The back-haul charge may be looked upon in some respects as similar to a proportional rate applicable to the movement of traffic between two points when coming from or destined to a more distant point. A proportional rate is ordinarily less than the local rate in recognition of the fact that the traffic has already paid or will subsequently pay a further transportation charge. Should any of these through rates to back-haul territory be arrived at by adding to the terminal rate something less than the local rate from the terminal, it would be in recognition of the fact that the traffic does not, in fact, move to the terminal and thence back to the interior point, but is stopped off at the interior point, and the carrier is thus saved the expense of hauling to the terminal and back to the intermediate point.

Where the back-haul territory is so wide as is this zone from the Pacific coast to the western edge of the intermountain region, it appears that some different principle of rate making from that which now obtains might well be applied. The full combination is, of course, the maximum rate which the carrier could obtain without danger of the traffic being actually transported to the terminals and thence reshipped to destination. It takes no account, however, of the situation of the shippers in this territory who draw a large percentage of their manufactured articles from the east and are in competition with the coast terminals for the distribution of these articles in the surrounding country. These coast cities always have had, and in all probability always will have, a marked advantage over many of the interior points by reason of their geographical position on the sea and the competition of water carriers from the Atlantic coast and other points. The new situations which have resulted by reason of the building of the Panama Canal gives to these points, however, a still greater advantage that is not natural, but artificial. The United States has provided a waterway across the Isthmus that has resulted in materially decreasing the rates, shortening the time, and increasing the efficiency of the water carriers to and from the Atlantic seaboard. In so far as any reasonable and lawful relation of rates will permit, the benefits of this increased service should be extended to all of the people. It may be said also that a policy of greater liberality on the part of the rail carriers to these interior towns will result in benefit to themselves. Every carload of freight brought from the east and distributed from these

interior cities instead of from the coast will effect for the carriers a saving in expense and an addition to their net revenues.

The present coast-to-coast rates of the rail lines and the problem of holding a reasonable proportion of the business to these interior points to the rail lines can only be met on the part of the carriers with rates which will afford the interior points reasonable opportunity to distribute merchandise in contiguous territory.

Will the establishment of such rates lower than the maximum amount the carriers can possibly secure for the traffic produce discrimination against points farther east to which higher rates apply? It is obvious that the low water-compelled rates to the coast terminals will inevitably affect the rates to a strip of territory lying along the coast from 200 to 300 miles in width. The adoption of any scheme of rate making that will permit cities lying within this zone to more effectively compete against the coast cities may permit these interior cities to distribute merchandise a little farther east than they would under the present plan, but that apparently will not result in unjust discrimination, for the same rule will apply to all points. That is to say, the rates to all these points will be adjusted on a uniform plan, and the rates will be increased with distance from the coast until they equal the maximum rates permitted to intermountain points. For example, iron articles on which, as heretofore stated, maximum carload rates have been permitted to intermountain points of 75 cents from the Missouri River, 90 cents from Chicago, \$1 from Pittsburgh, and \$1.10 from New York, bear a rate from Missouri River and many points east thereof to the Pacific coast of 55 cents. Upon the assumption that proportional rates from the terminals are established on this commodity which are, for example, 25 per cent less than the local rates when traffic does not in fact move to the terminals, the rate from the Missouri River to these back-haul points would be reduced by the coast combination wherever 75 per cent of the local rate from the coast terminal to destination is less than 20 cents. The rate from Chicago to the back-haul points would be reduced in all those cases where 75 per cent of the local rate from the terminal is less than 35 cents. The rate from Pittsburgh would be reduced to all points to which 75 per cent of the rate from the terminal is less than 45 cents. Where the carload rate on some of these commodities is 75 cents or more from the Missouri River, it is applied as a maximum to intermediate points. The rates on such commodities from the Missouri River to the back-haul points are therefore unaffected by coast combination. The rates from Chicago, Pittsburgh, and New York would be affected by coast combination to only those points to which 75 per cent of the local rate from the terminal is less than 15, 25, and 35 cents, respectively.

The maximum rate points would thus be moved a little farther east than if the full local were applied. This would widen the zone affected by the coast rates and extend the benefit of the low rates thereto to territory farther east than at present. The differences by which rates to points on the eastern side of the back-haul territory exceed the rates to points on the western side would be less marked and discrimination against the eastern points be thereby decreased. The same result could be accomplished by the publication of basing rates on these commodities from the territories of origin to the Pacific coast terminals. These basing rates added to the local rates from the terminals would determine the rates to back-haul points. It is obvious that there is now, and will be under any scheme of rate making that may be devised to the back-haul territory, some discrimination against points farther east in intermountain territory. This discrimination, however, under the plan suggested, does not appear to be unjust. Each interior point will be given the benefit of its geographical position and rates which apparently are not unjustly discriminatory. The extent to which carriers are hereby relieved from the operation of the rule of the fourth section by this order shall not exceed the degree of deviation permitted herein as between the terminal rates herein approved and the maximum intermediate rates herein authorized, nor shall the aforesaid degree of deviation be exceeded by any changes made in the future unless under further order of the Commission.

The method of constructing the rates to the back-haul points above suggested involves, necessarily, reduction in the rates to such points to a level lower than the carriers have anticipated by their application. The record in this case is not sufficient to afford a basis warranting the Commission in prescribing the exact measure of these rates. We shall, therefore, make no order in regard thereto at this time.

No evidence has been presented in this case to show that it is necessary to apply the coast terminal rates to any points except the ports of call on the Pacific coast at which the Atlantic-Pacific steamship lines deliver freight. We shall authorize these carriers to establish the rates proposed to these ports upon all the articles in the list, excepting those to which exceptions have been noted.

We shall also authorize the maintenance of higher rates as hereinbefore outlined to the intermountain points. We shall expect the carriers within 60 days from date of service hereof to submit to the Commission such plan for adjustment of rates to the back-haul points as they may desire. Should the carriers submit no such plan within this time, the Commission will undertake such investigation as to these rates as will enable it to enter a proper order with regard thereto.

APPENDIX.

The schedule C commodities are here shown, together with the rates now applicable, as well as the rates proposed by the carriers, from eastern defined territories to Pacific coast ports. The rates are given in cents per 100 pounds and with carload minimum of 40,000 pounds unless otherwise stated. The figures in roman type indicate carload rates, while those in italics indicate less-than-carload rates.

Item No.	Articles.	Present rates.						Proposed rates.					
		Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group I.	Group A.	Group B.	Group C.
1160	Ammonia, sulphate of, in bags, present min. c. l., 60,000 lbs.; proposed, 80,000 lbs. ¹				\$50	50	50	50	50	50			
225	Bags and bagging, burlap, gunny, hemp or jute, not colored artificially nor figured, painted, or printed with other than dealers' or manufacturers' brands, not backed with paper or lining, in bales; present min. c. l., 30,000 lbs.; proposed, 40,000 lbs.	55	55	55	55	55	55	55	55	55			
235-A	Bags, burlap (cotched), not of paper lined; present min. c. l., 30,000 lbs.; proposed, 40,000 lbs.	50	50	50	50	50	50	50	50	50			
480	Calcium carbide, in tin cans, packed in jacketed cans, or in iron or steel cans or drums; present min. c. l., 30,000 lbs.; proposed, 60,000 lbs.	125	125	125	125	125	125	125	125	125			
485	Calcium chloride, in iron drums; present min. c. l., 40,000 lbs.; proposed, 60,000 lbs.				\$55	55	55	55	55	55			

¹Transfer to schedule A.

²Rates named will also apply to Bay Shore, Cal.

(Group D rates will also apply from New York piers of Southern Pacific Co.-Atlantic Steamship lines (Morgan line), Mallory Steamship Co., and Old Dominion Steamship Co. (W) will not apply from New York piers of Southern Pacific Co.-Atlantic Steamship lines (Morgan line), Mallory Steamship Co., nor Old Dominion Steamship Co.

Item No.	Articles	Present rates.						Proposed rates.					
		Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group I.	Group A.	Group B.	Group C.
640	Canned goods, n. o. s., in metal cans, boxed; in glass or earthenware, packed in boxes; in pails or tubs packed in barrels, boxes, or crates, or in bulk in barrels, half barrels, kils, or kegs, viz.: sals Beans and peas, canned, present min. c. l., 40,000 lbs.; proposed, 60,000 lbs.	90	90	90	90	90	90	90	90	90	90	90	90
630	Corn, present min. c. l., 40,000 lbs.; proposed, 60,000 lbs.	90	90	90	90	90	90	90	90	90	90	90	90
615-C	Fish (not dried), including shellfish, cooked or partially cooked; clam broth; clam chowder; clam juice; sardines; boxed; present min. c. l., 40,000 lbs.; proposed, 60,000 lbs.	95	95	95	90	90	95	95	95	90	95	95	90
610-C	Fruits, not fruits preserved in alcoholic liquor nor macerated, baked, with or without cheese or vegetable ingredients; vegetables (not dried vegetables, nor pickles), including pork and sausage; fruit cakes; present min. c. l., 40,000 lbs.; proposed, 60,000 lbs.	95	95	95	90	90	90	90	90	90	95	90	90
630-C	Meats with or without vegetable ingredients, including pickled or dilled meats; soups; pork and beans; present min. c. l., 40,000 lbs.; proposed, 60,000 lbs.	95	95	95	90	90	90	90	90	90	95	90	90
635	Milk, condensed (liquid or dry), in metal cans boxed; or in glass or earthenware, packed in boxes; or in bulk in barrels; present min. c. l., 40,000 lbs.; proposed, 60,000 lbs.	95	95	95	90	90	95	95	95	90	95	95	90
625	Mince meat, in metal cans boxed; in glass or earthenware, packed in boxes; in paper boxes, boxed; in pails or tubs, packed in barrels, boxes, or crates; or in bulk in barrels; present min. c. l., 40,000 lbs.; proposed, 60,000 lbs.	85	85	85	90	90	90	90	90	90	90	90	90
645	Tomatoes, canned; present min. c. l., 40,000 lbs.; proposed, 60,000 lbs.	90	90	90	90	90	90	90	90	90	90	90	90
665	Vinegar and vinegar (not acetic acid), in glass, earthenware, or tin, boxed, or in wood, prepaid or guaranteed; present min. c. l., 30,000 lbs.; proposed, 40,000 lbs.	90	90	90	90	90	90	90	90	90	90	90	90

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Item No.	Articles.	Present rates.										Proposed rates.									
		Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group I.	Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group I.	Group A.	Group B.
1310	Hardware and tools, viz.—Continued. Hardware, viz.—Continued. Sand, flint, emery, carborundum, and other abrasive papers, present min. c. l., 30,000 lbs.; proposed, 30,000 lbs.	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160	110 160
2225	Screws (for wood), iron or steel, in boxes or kegs, present min. c. l., 30,000 lbs.; proposed, 30,000 lbs.	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130	85 130
4105	Sisal, sisal, metal, boxed; present min. c. l., 30,000 lbs.	135	135	135	135	135	135	135	135	135	135	135	135	135	135	135	135	135	135	135	135
5010	Tools, viz.— Tools as described in Items 152 to 178, inclusive.	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175
5015	Tools as described in Items 179 to 186, inclusive.	190	190	190	190	190	190	190	190	190	190	190	190	190	190	190	190	190	190	190	190
1815	Files, including rasps, in boxes or barrels; present min. c. l., 30,000 lbs.	135	135	135	135	135	135	135	135	135	135	135	135	135	135	135	135	135	135	135	135
1865	Peavies, cut hooks and handles for same; pick poles, palanquins, including tongs; tin snips, present min. c. l., 30,000 lbs.	165	165	165	165	165	165	165	165	165	165	165	165	165	165	165	165	165	165	165	165
1910	Picks, grub hoes and mattocks, with or without handles, boxed or with handles exposed and heads boxed, or crated; axes, with or without handles, boxed or with handles exposed and blades boxed or crated; present min. c. l., 30,000 lbs.; proposed, 30,000 lbs.	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125
2400	Sledges, wedges, anchors, truck chains, in boxes or kegs, present min. c. l., 30,000 lbs.; proposed, 30,000 lbs.	85	85	85	85	85	85	85	85	85	85	85	85	85	85	85	85	85	85	85	85
2007	Hemp, sisal, jute or flax, in bales; present min. c. l., 24,000 lbs.; proposed, 24,000 lbs.	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75
2015	Hose, canvas and leather, in bales or crates.	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175
2019	Hose, rubber (with or without covering), crated or in bales.	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175
3185	Packing, n. o. s., including rubber packing.	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160
2015	Belting, rubber, cotton, or leather.	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160
2017	Hose, metallic or flexible metallic tubing, in bales.	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160
2018	Hose, rubber (with or without covering), in cases.	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160

Item No.	Articles.	Present rates.								Proposed rates.									
		Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group I.	Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group I.
2125	Iron and steel, articles of, viz—Continued.																		
2130	Butts and hinges (except spring), bags, bolts,																		
2140	n. o., hoop knaps, staples, links, connecting																		
2150	links (not link belting), lay links, and cold																		
2160-A	shuts, in boxes, bags, barrels, or casks; present																		
2160	min. c. l., 30,000 lbs.; proposed, 50,000 lbs.																		
2170	Castings, n. o. s., including sprivert wheels,																		
2185	n. o. s., as from mold, except being cleaned and																		
2190	drilled with bolt holes and dipped to preserve																		
2200	from rust, not machine finished; forgings, n. o.																		
2210	not further finished than being drilled with																		
2220	bolt holes; cleavies; ingot molds; present min.																		
2230	c. l., 40,000 lbs.; proposed, 50,000 lbs.																		
2240	Chain, n. o., including link belting; present																		
2250	min. c. l., 40,000 lbs.; proposed, 60,000 lbs.																		
2260	Crowbars, clawbars, pinchbars, tamping bars;																		
2270	present min. c. l., 40,000 lbs.; proposed, 60,000																		
2275-A	lbs.																		
2285	Cylinders, wrought, welded or seamless, for com-																		
2290	pressed air or gas; present min. c. l., 30,000 lbs.,																		
2300	proposed, 36,000 lbs.																		
2315	Elbow for gas, steam, air, oil, water and bolts in																		
2320	elbows; present min. c. l., 50,000 lbs.; proposed,																		
2330	50,000 lbs.																		
2340	Fence k. d., and woven steel picket fence and ex-																		
2350	panded metal fencing, in bundles; fence brack-																		
2360	ets and clamps, post tips and fence picket tips,																		
2370	in boxes; iron fence gates, iron fence posts and																		
2380	iron posts, n. o. s.; present min. c. l., 30,000 lbs.,																		
2390	proposed, 38,000 lbs.																		
2405	Fire plugs, fire hydrants, and water gates; pres-																		
2410	ent min. c. l., 36,000 lbs.; proposed, 36,000 lbs.																		
2420-A	Lathing (woven wire, corrugated, perforated, or																		
2430	expanded); expanded metal flooring; metal																		
2440	concrete reinforcement, n. o. s.; iron																		
2450	corner irons; in bundles; present min. c. l.,																		
2460	50,000 lbs.; proposed, 40,000																		
2470	lbs.																		
2480	Nails and spikes (not including railroad, ship, or																		
2490	boat spikes), cut or wire, n. o. s.; also cement-																		
2500	coated nails, in boxes or bags.																		

Item No.	Articles	Present rates.										Proposed rates.									
		Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group J.	Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group J.		
New.	Iron and steel, articles of, viz.—Continued.																				
New.	Pipe, cast iron, and cast-iron connections for same; present min. e. l., 30,000 lbs.; proposed, 50,000 lbs.																				
*2275	Pipe, wrought iron or steel, welded or seamless, including boiler flues; present min. e. l., 40,000 lbs.; proposed, 50,000 lbs.																				
2280	Pipe, iron, cast (including riveted, lock bar, spiral, or straight seam pipe); present min. e. l., 24,000 lbs.; proposed, 30,000 lbs.																				
2080	Pipe, mild or iron, black, threaded, or headed and threaded, with nuts and washers attached or detached and packed in kegs; and pipe band or rod saddles or shoes; present min. e. l., 40,000 lbs.; proposed, 50,000 lbs.																				
2080	Plate and sheet, No. 11 and heavier (black or galvanized), not bent, including boiler heads and ends, flanged or unflanged; present min. e. l., 40,000 lbs.; proposed, 50,000 lbs.																				
2085	Plate and sheet, No. 11 to 16, both inclusive (black or galvanized), not bent or punched; present min. e. l., 40,000 lbs.; proposed, 50,000 lbs.																				
2245-A	Sheet, No. 12 and lighter (black or galvanized), but exclusive of planished or rusks; not bent or punched; corrugated, including ridge rolls, flashings, and fastenings; present min. e. l., 40,000 lbs.; proposed, 50,000 lbs.																				
2245-A	Sheet, flat, rolled or corrugated, punched but not riveted; present min. e. l., 30,000 lbs.; proposed, 40,000 lbs.																				
2115	Box straps, in bundles; present min. e. l., 30,000 lbs.; proposed, 50,000 lbs.																				
2275-B	84 angles, bands, iron or wire, in bundles; present min. e. l., 40,000 lbs.; proposed, 50,000 lbs.																				
2430-B	Tie, balling, in bundles; present min. e. l., 40,000 lbs.; proposed, 50,000 lbs.																				
Class	Wire, proposed, 30,000 lbs.																				
2275	Shoes, horse, minis, and ox, including toe calks in boxes or kegs; present min. e. l., 40,000 lbs.; proposed, 50,000 lbs.																				

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Item No.	Articles.	Present rates.										Proposed rates.									
		Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group I.	Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group I.	Group A.	Group B.
3345-A	Paper and articles of paper; in bundles, except as otherwise provided, viz:	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120
325	Adding machine, min. c. l., 30,000 lbs.	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175
3300	Books, blank, scrap and stub file, and school composition books, min. c. l., 30,000 lbs.	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125	125
3345-A	Cardboard, blank, min. c. l., 30,000 lbs.	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175
	Check for cash registers, min. c. l., 30,000 lbs.	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180	180
	Cigarette, in boxes, min. c. l., 30,000 lbs.	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120
3340	Cloth lined, min. c. l., 30,000 lbs.	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175
3275	Coin wrappers, packed flat in pasteboard boxes, boxed.	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175
3345-A	Labels, boxed or crated, min. c. l., 30,000 lbs.	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175
	Envelopes, in boxes; by or insect (disks, plates, or sheets); folders, filing; ledger; lithographed bookbinding; lunch sets, viz, napkins and table cloths; monotype; old board; paperclips (paper); paper; picture making tags; paper; cloth or cloth lined; paper; and gummed, in boxes; writing (plain or ruled); min. c. l., 30,000 lbs.	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120
3215	Present min. c. l. as shown above; proposed, 40,000 lbs.	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130	130
675	Bag and barrel linings (crinkled paper), min. c. l., 30,000 lbs.	170	170	170	170	170	170	170	170	170	170	170	170	170	170	170	170	170	170	170	170
3220-B	Carpet lining, wedged, min. c. l., 24,000 lbs.	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110
	Indented paper, min. c. l., 40,000 lbs.	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75
4870	Corrugated paper, min. c. l., 24,000 lbs.	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110
4870	Corrugated strawboard, min. c. l., 24,000 lbs.	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110
3270	Insulating or deadening (wedged), min. c. l., 30,000 lbs.	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110
4870	Wrappers, bottle, corrugated or indented, min. c. l., 24,000 lbs.	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175
	Present min. c. l. as shown; proposed, 40,000 lbs.	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160	160

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Item No.	Articles	Present rates.								Proposed rates.							
		Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group I.	Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.
3340	Paper and articles of paper in bundles, except as otherwise provided.	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00
3345-A	Wrapping (not printed), waxed, oiled, glazed or glossy, present min. c. l., 30,000 lbs.; proposed, 40,000 lbs.	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120
3345-A	Wrapping (printed), min. c. l., 30,000 lbs.	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175	175
3345-A	Wrapping (not printed), min. c. l., 30,000 lbs.	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00
3345-A	Wrapping (printed), min. c. l., 30,000 lbs.	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120
3345-A	Bags, plain or printed, min. c. l., 40,000 lbs.	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120
3345-A	Fruit, cut to shape, min. c. l., 40,000 lbs.	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75
3345-A	Tagboard, min. c. l., 40,000 lbs.	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110
3345-A	Tailors' pattern, min. c. l., 30,000 lbs.	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120
3345-A	Tissue paper, min. c. l., 40,000 lbs. 3.	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110
3345-A	Present min. c. l. as shown; proposed, 40,000 lbs.	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
3345-A	Writing (flat), plain or ruled, in linen bond, and table; present min. c. l., 30,000 lbs.; proposed, 40,000 lbs.	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
3345-A	Protein, n. c. l., including pickled capers, cauliflower, green beans, fruit, mangoes, drives, onions, paprika, tomatoes.	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
3345-A	Table sauces, n. c. l., including catsup, chili sauce, chutney, horseradish (prepared), India relish, mustard (prepared), olive oil, pepper sauce, salad dressing, vinegar, Worcester sauce. In glass or earthenware, packed in boxes or in metal cans in boxes; in paper or tubes when packed in boxes, present min. c. l., 30,000 lbs.; proposed, 40,000 lbs.	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
3345-A	Potassium cyanide of, in metal can 3, loaded; present min. c. l., 30,000 lbs.; proposed, 40,000 lbs.	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120	120
3345-A	Powder bag material (metal), in bundles, with heads and bottoms nested and crated; present min. c. l., 30,000 lbs.; proposed, 40,000 lbs.	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00	00

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Reduction in rates on rudder caps only.

Reduction in rates on Federal caps only.

Rate named applies only from points in Alabama.

Cancel rate from other points taking group of 10 or more from New York place of

Group D rate will also apply. Clean rates will apply.

* Rate continues
* Fee item 2054

your pure good must be

• Articles in periodicals, newspapers, and magazines without premium; p

per cent, the remainder of the cartoon to the remainder to male 14.)

tain premiums. (Exception to rule 201)

Cartoon Impulse Co., or to points taking group D
Smith Co., or to points taking group D

e), Mallory Steamship Co., and Old Dominion

Rate from New York prices

is Rates published under authority of the

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-Atlantic Steamship lines (Morgan line), Mallory Steamship Co., and Old Dominion Steamship Co. Goods will be charged at 110 per cent of the rates provided for the same articles packed in the same way with and without premiums, only such portion of the cartload as contains premiums will be charged with and without premiums, only such portion of the tickets and bills of lading whether or not packages are shipped will be required to state on shipping documents.

Shippers will be required to state on shipping documents:

Southern Pacific Co.-Atlantic Steamship lines (Morgan line), Mallory Steamship Co., and Old Dominion Steamship Co.-Atlantic Steamship lines (Morgan line), Southern Pacific Co.-Atlantic Steamship lines (Morgan line), Mallory Steamship Co., and Old Dominion Steamship Co.-Atlantic Steamship lines (Morgan line).

The following group D or group E rates to destination:

Mallory Steamship Co., or old Dominion Steamship Co., will not apply on shipments

South Section Order No. 2601 of Apr. 13, 1913.

e), Mallory Steamship Co., and Old Dominion
Co., Atlantic Steamship Lines (No. 100)
Mallory Steamship Co.-Atlantic Steamship Lines (No. 100) of Apr. 12, 1913.

Rate from New York plans on basis of 1934-35 rates. **Fourth Section Order No. 200-21-10-11-12-13-14-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-**

NOTE. Rates published under authority of Interstate Commerce Commission.

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Item No.	Articles.	Present rates.								Proposed rates.									
		Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group J.	Group A.	Group B.	Group C.	Group D.	Group E.	Group F.	Group G.	Group H.	Group J.
4205-A	Stoves, viz: Radiators (without gas heating attachment) and coils heating iron or steel; present min. c. l., 40,000 lbs.; proposed, 50,000 lbs.	100	100	100	100	100	100	100	100	100	75	75	75	75	75	75	75	75	75
4210-A	Sectional boilers, cast iron, including not to exceed 1 ash hoe, 1 poker, and 1 shaker for each boiler; present min. c. l., 40,000 lbs.; proposed, 50,000 lbs.	120	120	120	120	120	120	120	120	120	85	85	85	85	85	85	85	85	85
4190-A	Stovepipe iron (cut to shape), nested solid, boxed, ready to erect and shipped; present min. c. l., 40,000 lbs.; proposed, 50,000 lbs.	95	95	95	95	95	95	95	95	95	75	75	75	75	75	75	75	75	75
4205	Flacks iron, n. o. k.; tacks, in paper strips (for use in a shoe machine); glaziers' points; shoe nails; shoe tacks; shoe shanks; in boxes, kegs, or barrels; present min. c. l., 24,000 lbs.; proposed, 50,000 lbs.	175	175	175	175	175	175	175	175	160	155	155	155	155	155	155	155	155	155
4300	Tile, marble or slate (surface not exceeding 288 square inches); tile, earthen or encaustic (surface not exceeding 288 square inches), for flooring and facing, plain or figured, glazed or unglazed, also enameled brick; tile, opaline glass (surface not ex- ceeding 288 square inches); present min. c. l., 30,000 lbs.; proposed, 40,000 lbs.	80	80	80	80	80	80	80	80	80	80	80	80	80	80	80	80	80	80
4300	Tin and articles of tin, viz: Cans, pails, or boxes, tin, nested; also milk cans having capacity of 3 gallons and over; present min. c. l., 24,000 lbs.; proposed, 24,000 lbs.	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95	95
4375-A	Tin, pig and slab; present min. c. l., 40,000 lbs. Tin and terno plate (flat as from the mill, not fur- ther manufactured), in boxes or crates; present min. c. l., 40,000 lbs.; proposed, 50,000 lbs.	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75	75
4300-A	Twine and cordage, viz: Cotton, jute, flax, sisal, spring steel, manila and cotton, also twine and cordage and fish-netting twine, and fish netting and fish nets; in bales, boxes, or barrels; also binding twine; rope, all kinds, except wire hair; present min. c. l., 30,000 lbs.; proposed, 40,000 lbs. Netting, fish (cotton), in bundles; present min. c. l., 24,000 lbs.; proposed, 40,000 lbs.	* 74	70	70	70	70	70	70	70	70	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
3000		* 100	100	100	100	100	100	100	100	100	75	75	75	75	75	75	75	75	75

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Wire and wire goods, viz:

4790-B	Wire, barbed, including staples, steel stay guards and stretchers: present min. c. l., 40,000 lbs.; proposed, 80,000 lbs.	85	85	70	70	70	70	70	55	(*)	(*)	55	55	40
4808	Wire cloth or netting, iron or steel, n. o. s., in rolls.	160	160	160	160	160	160	160	160	165	165	165	165	165
4815	Wire fencing, in rolls: staples, steel stay guards, stretchers and wire fence gates and coarse wire netting, in bundles: present min. c. l., 30,000 lbs.; proposed, 40,000 lbs.	90	90	80	80	80	80	80	80	75	75	75	75	60
4790	Wire, insulated or covered, n. o. s.: present min. c. l., 30,000 lbs.; proposed, 50,000 lbs.	175	175	175	175	175	175	175	175	155	155	155	155	100
4798-D	Wire, iron, plain, galvanized, tinned, or coppered (including steel stay guards): present min. c. l., 40,000 lbs.; proposed, 80,000 lbs.	110	110	110	110	110	110	110	110	75	75	75	75	75
4825	Wire rods: present min. c. l., 40,000 lbs.; proposed, 80,000 lbs.	85	85	80	80	80	80	80	80	(*)	(*)	55	55	(*)
4830	Wire rope or cable, iron or steel, n. o. s., not insulated: present min. c. l., 40,000 lbs.; proposed, 80,000 lbs.	180	180	180	180	180	180	180	180	(*)	(*)	55	55	(*)
4840	Wire rope or cable, iron or steel, n. o. s., not insulated: present min. c. l., 40,000 lbs.; proposed, 80,000 lbs.	110	110	110	110	110	110	110	110	75	75	75	75	75
4838	Wire cable, made up of insulated copper wires in lead pipes: also copper wire, coppered with copper rope or copper cable, with or without insulation: also insulated iron wire: present min. c. l., 30,000 lbs.; proposed, 50,000 lbs.	110	110	110	110	110	110	110	110	75	75	75	75	75
1341	Rail fastenings, viz: Angle bars, fish bars, rail joints, rail-joint splice bars, base plates, frog fillers, tie-rod, spikes, track bolts, track nuts, rail chairs, natural creepers, and steel clip fastenings for steel ties, min. c. l., 60,000 lbs.	80	80	80	80	80	80	80	80	75	75	75	75	65

¹ Not to exceed 10 per cent of the number of containers, except milk cans, having a capacity of 3 gallons and over in any car may be shipped not nested. Milk cans having capacity of 3 gallons and over in any quantity may be shipped not nested.

On tin plate, which is used for making packages (or containers) for goods for export trade to foreign countries, forwarded to points in the United States under this tariff, a refund of 1 cent per pound will be made to shipper upon satisfactory proof of exportation and claims for refund promptly filed with Transcontinental Freight Bureau, 608 South Dearborn Street, Chicago, Ill., to be credited.

* Rate from Cambridge, Salisbury, Pa., Chambersburg, Salersburg, W. Va., will be 70 cents per 100 pounds.

* Rate cancelled. Class rates will apply.

* Rate named applies only from points in Alabama taking group C rates.

* Cancel rate from other points taking group C rates.

* Will apply only from Boston, East Boston, East Cambridge, Mass., Portland, Lewiston, Me., and points in Delaware, District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia, shown on pp. 2 to 16, inclusive, as taking group A rates.

When shipped in mixed carloads, will take the carload rate provided for each. When the aggregate weight of a carload (steel), and cross-tie fastenings and rail fastenings, when shipped in mixed carloads, is sufficient to make minimum weight of 60,000 pounds, except that when the shipment consists of an equal amount of rails and fastenings, etc., the weight sufficient to make minimum weight of 60,000 pounds shall be added to the weight of the lowest rated article.

* Cancel rate.

Co., and Old Dominion Steamship Co. Pennly, Va., Virginia, and West Virginia, shown on pp. 2 to 16, inclusive, as taking group A rates.

Present and proposed rates, per ton of 2,240 pounds, on item 1240, rails (steel), including mining rails, cross-ties (steel), and sawmill track, minimum carload 60,000 pounds, except where length of rails requires two or more cars, in which case the minimum carload will be 40,000 pounds for each car used. (Exception to rule 9.)

From—	Present rate.	Proposed rate.
Bethlehem, Pa.; Harrisburg, Pa.; Newberry, Pa.; Philadelphia, Pa.; Sparrows Point, Md.; Steelton, Pa.; Williamsport, Pa.	\$14.00	(2)
Johnstown, Pa.; Cumberland, Md.	12.70	(3)
Allegheny, Pa.; Bessemer, Pa.; Braddock, Pa.; Buffalo, N. Y.; Carnegie, Pa.; Clairton, Pa.; Donora, Pa.; Girard, Ohio; Homestead, Pa.; Huntington, W. Va.; Koppel, Pa.; Lackawanna, N. Y.; Munhall, Pa.; Pittsburgh, Pa.; Pittsburgh, Pa. (south side); South Duquesne, Pa.; Youngstown, Ohio.	13.50	(4)
Lorain, Newark, South Lorain, Ohio.	13.10	(5)
Yakaburg, Miss.	11.00	\$11.00
Group E rates	\$11.00	\$11.00
Group F rates	11.00	11.00
Group F or group G rates	11.00	11.00
Denver, Minneapolis, Pueblo, Colo.	9.00	9.00

¹ Rails, cross-ties (steel), and cross-tie fastenings and rail fastenings, when shipped in mixed carloads, will take the carload rates provided for each. When the aggregate weight of a mixed carload does not amount to 60,000 pounds, add to the weight of the heaviest loaded article in the shipment sufficient to make minimum weight 60,000 pounds, except that when the shipment consists of an equal amount of rails and fastenings, etc., the weight sufficient to make minimum weight of 60,000 pounds shall be added to the weight of the heaviest loaded article.

² Coal rate.

³ Group D rate.

⁴ Group D rate will also apply from New York piers of Southern Pacific Co.-Atlantic Steamship lines (Morgan line), Mallory Steamship Co., and Old Dominion Steamship Co.

⁵ Rate will also apply from points in Alabama taking group C rates.

Application of rates.

LIST OF ARTICLES TAKING RATES PROVIDED FOR "HARDWARE" IN ITEM 9000.

Item.	Hardware.	Item.	Hardware.
29	Bale tie fasteners.	69	Knobs, shutter, in boxes or barrels.
30	Belt lacings, steel, in bundles.	70	Ladies, melting, in bundles.
32	Bolts, door, shutter, and sash, in boxes, kegs, or barrels.	71	Latches, thumb, in boxes or barrels.
33	Bolts, shipbuilding.	72	Lawn rollers.
34	Brackets, handrail or shelf, in boxes or barrels.	73	Lawn sprinklers, boxed or crated.
35	Brackets, lamp, iron, in boxes or barrels.	74	Lifts, sash and transom, in boxes or barrels.
36	Calks, boot, and sets, boxed.	76	Mast hoops.
37	Candlesticks, miners', iron or steel, boxed.	77	Mats, asbestos, in bundles.
38	Carborundum, in boxes or barrels.	78	Mats, door (steel or wire), in bundles.
39	Casters, furniture and truck, in boxes or barrels.	79	Metal keys for opening cans, in boxes, kegs, or barrels.
40	Catches, cupboard and window, in boxes or barrels.	80	Metal sash carriers, in bundles.
41	Chains, halter, jack, and safety, in boxes or barrels.	81	Mortars and pestles, iron, in boxes or barrels.
42	Clamps or bands, hose, in boxes or barrels.	82	Openers, bottle or can (not including corkscrews), in boxes.
43	Cleats, line, in boxes or barrels.	83	Plates, screw and extra parts for same, in boxes or barrels.
44	Clews, shipbuilding.	84	Pots, glue, in boxes or barrels.
45	Clips, axle, spring, and singletres, in boxes or barrels.	85	Pulley blocks and chains, and hay-carrier pulleys.
46	Cotters, spring, in boxes or barrels.	86	Pulleys (not machinery), axle, hay-fork, also screw and side pulleys, in boxes or barrels.
47	Emery powder or emery grits, emery cloth and carborundum cloth, and grinding or polishing powders or sand, n. o. s., in boxes or barrels.	87	Pulleys (not machinery) and blocks.
48	Escutcheon pins, in boxes or barrels.	88	Registers and ventilators, floor or wall (iron), in boxes, barrels, or crates.
49	Eyebolts, shipbuilding.	89	Ring bolts.
50	Eyes, screw, including hooks (wire), in boxes or barrels.	90	Rings, hitching, in boxes or barrels.
51	Fasteners and fastenings, bed, blind, and door, in boxes or barrels.	91	Rings, hog, in boxes or barrels.
52	Felloe plates (iron), in boxes or barrels.	92	Rods, saw, in boxes or barrels.
53	Fifth wheels, carriage or wagon (iron), in bundles.	93	Rollers, sash, in boxes or barrels.
54	Fixtures, grindstone (iron), in boxes or barrels.	94	Rowlocks.
55	Gates, molasses and oil, in boxes or barrels.	95	Scrapers, foot, in boxes or barrels.
56	Guy clamps (iron), and wire-rope clips (iron), in boxes or barrels.	96	Screws, handrail, in boxes or barrels.
57	Handles, chest or door, in boxes or barrels.	97	Screws (made of wood), bench or hand.
58	Hangers and rollers, barn-door; hangers, parlor-door (including track for same).	98	Shackles.
59	Hooks, awning, belt, bird-cage, clothes-line, cup, hammock, harness, meat, and screw, in boxes or barrels.	99	Sheaves (ship).
60	Hooks, shipbuilding.	100	Skolins, thimble, in bundles.
61	Irons, corner, in boxes or barrels.	101	Stair treads, metal, boxed.
62	Irons, dress-suit case, satchel irons, and trunk-frame irons, boxed.	102	Stones, oil and hones, in boxes or barrels.
63	Irons, wagon and carriage, wrought, n. o. s., in bundles.	103	Stones, sand, whet, scythe, or rubbing, boxed.
64	Keys, lock, in boxes or barrels.	104	Thimbles, shipbuilding.
65	Knives, beet-topping, cans, hay, and corn, for field purposes (not cutlery), in bundles.	105	Traps, animal, n. o. s., in bundles.
66	Knives, mincing and mower, also mower-knife sections, in bundles.	106	Trolley wheels, boxed.
67	Knobs, base (wooden), in boxes or barrels.	107	Trunk clasps, in boxes or barrels.
68	Knobs for furniture and for locks; sash fasteners, locks, in boxes or barrels. ¹	108	Wagon-tongue springs or supports, in bundles.
		109	Wall plugs, wall ties, veneer bonds, and bolt shields, boxed.
		110	Wall points and well-drill points.
		111	Wheels, emery, and other grinding wheels (not machines), n. o. s., in boxes or barrels.
		112	Wheels, well, in boxes, barrels, or crates.
		113	Windlasses (not steam).
		114	Wire cork fasteners, in bags.

¹ Does not include brass or other trimmings or knobs for bedsteads in any form.

Application of rates—Continued.

LIST OF ARTICLES TAKING RATES PROVIDED FOR "HARDWARE" IN ITEM 5003.

Item.	Hardware.	Item.	Hardware.
115	Balances, spring (scales), boxed.	134	Mills, coffee, small (family), boxed.
116	Cards, horse and wool, boxed.	135	Parers, apple and peach, and extra parts for same, in boxes or barrels.
117	Chains, sash, in boxes or barrels.	136	Fitters, fruit (hand), including raisin seeders, in boxes or barrels.
118	Checks, door, in boxes or barrels.	137	Plates, push, in boxes or barrels.
119	Clippers, orange, in boxes or barrels.	138	Poppers, corn, boxed or crated.
120	Combs, curry, in boxes or barrels.	139	Presses, fruit (hand), boxed or crated.
121	Corkscrews, boxed.	140	Pruners, tree (hand), in bundles.
122	Cutters or grinders, meat (hand), and extra parts, boxed.	141	Rope halters, horse and cattle tie, boxed or in bales.
123	Cutters, tobacco or cigar, in boxes, barrels, or crates.	142	Scrapers, flue or tube (including coke scraper heads), in packages.
124	Figures and letters (steel), in boxes or barrels.	143	Screws, bench, iron, in boxes or barrels.
125	Files (clip or spindle), paper, boxed or crated.	144	Screws, cheese-press, in boxes, barrels, or crates.
126	Grinders, mechanics' hand tool, boxed.	145	Shavers, beef, in boxes or barrels.
127	Handcuffs and leg irons, in boxes or barrels.	146	Shears, pruning, in boxes or barrels.
128	Handles, furniture, in boxes or barrels.	147	Shepherds' crooks, in bundles.
129	Hardware, carriage and wagon, n. o. s., boxed.	148	Springs, door and window, in boxes or barrels.
130	Hardware, saddlery, plain or nickel plated, including hames (not wooden); also composition martingale rings, in boxes or crates.	149	Squeezers, lemon, iron, in boxes or barrels.
131	Irons, curling, in boxes or barrels.	150	Trouser and other clothes hangers (metal), boxed.
132	Knives, planer, boxed.	151	Upsetters (tire), tire setters and shrinkers.
133	Knives, shoemakers' and fruit paring knives (similar in shape to shoemakers' knives), boxed.	152	Wire fly killers, boxed or crated.

LIST OF ARTICLES TAKING RATES PROVIDED FOR "TOOLS" IN ITEM 5010.

Item.	Tools.	Item.	Tools.
153	Axdes, with or without handles, boxed.	167	Movers, car, in bundles.
154	Augers, posthole, including diggers, in bundles.	168	Peavies, cant hooks and handles for same, pike poles, pickaroons, skidding tong, timber carriers and parts thereof.
155	Axes, with or without handles, boxed or with handles exposed and blades boxed or crated.	169	Picks, grub hoe, and mattocks, with or without handles, boxed or with handles exposed and heads boxed or crated.
156	Benders, tires, in bundles.	170	Saws, buck, in boxes or crates.
157	Blocks, saws and blacksmiths' cones.	171	Shears, grass, hedge and sheep, in boxes or barrels.
158	Choppers and cleavers (butchers'), not including hand or power meat-chopping machines.	172	Stretchers, barbed-wire and woven-wire, in bundles.
159	Clamps, cabinet, carriage makers', door and saw, in boxes or barrels.	173	Tools (mechanics'), edge and other hand tools (n. o. s.), boxed.
160	Cleaners, window, rubber-edged, in bundles.	174	Trowels, garden and floral, in boxes or barrels.
161	Hammers and hatchets, in boxes or barrels.	175	Vises, iron.
162	Hooks, bush, swamp, grass, hay, and pruning, in bundles.	176	Wrenches, iron or steel, each weighing 100 pounds or over, not boxed.
163	Ice tools, including chisels, chippers, picks, saws, shaves, and tongs, in bundles.	177	Wrenches, monkey or screw, in boxes or barrels.
164	Jacks, wagon, boxed or crated.	178	Wrenches, n. o. s., iron or steel, in boxes or barrels.
165	Mallets, wooden, boxed.		
166	Miter boxes, boxed or crated.		

LIST OF ARTICLES TAKING RATES PROVIDED FOR "TOOLS" IN ITEM 5013.

179	Coppers, soldering, in boxes or barrels.	183	Jacks, logging.
180	Crosscut saw handles, with metal attachments, boxed.	184	Kits, family mending, cobblers', harness, and tinkers', boxed.
181	Drills, twist, boxed or crated.	185	Prod poles, in bundles.
182	Froes, shingle, in boxes or barrels.	186	Pullers, cork and nail, in boxes or barrels.

Rate will not apply on mechanics' tools, in chests—that is, on kits of mechanics; neither will rate apply on scientific tools and surgical instruments.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 29th day of January, A. D. 1915.

AMENDED FOURTH SECTION ORDER NO. 124.

IN THE MATTER OF APPLICATIONS NOS. 203, 342, 343, 344, 349, 350, AND 352, ON BEHALF OF CARRIERS PARTIES TO THE TARIFFS THEREIN NAMED, BY R. H. COUNTISS, C. W. BULLEN, AND J. F. TUCKER, THEIR AGENTS, FOR RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE, AS AMENDED JUNE 18, 1910, WITH RESPECT TO COMMODITY RATES FROM EASTERN POINTS OF SHIPMENT WHICH ARE HIGHER TO INTERMEDIATE POINTS THAN TO PACIFIC COAST TERMINALS.

COMMODITY RATES.

A public hearing having been held with reference to the justification for the additional relief sought by the carriers respecting the rates on the commodities listed under schedule C, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That, effective May 1, 1915, Fourth Section Order No. 124, amendments thereof and supplements thereto be, and they are hereby, amended to read as follows:

It is ordered, That for the purpose of disposing of these applications the United States shall be divided into five zones, known as zones 1, 2, 3, 4, and 5. On traffic to California terminals zone 1 shall include all that territory of the United States lying west of the following line:

(a) Beginning at the intersection of the north boundary of the state of Minnesota with the northwestern shore of Lake Superior; thence northwesterly along the shore of Lake Superior to a point immediately west of Duluth, Minn.; thence following the west boundary of transcontinental group D, as shown in transcontinental tariff No. 1-M, of R. H. Countiss, agent, I. C. C. No. 952, to its intersection with the northern boundary of transcontinental group E; thence follow-

ing the east boundary of group E to a point at or near Norwood, Minn.; thence following an imaginary line through Hutchinson, Minn., to Wilmar, Minn.; thence via the line of the Great Northern Railway through Benson, Morris, Herman, Yarmouth, and Moorhead, Minn.; thence along the line of the Great Northern Railway to Fargo, N. Dak.; thence to Yarmouth, Minn.; thence to Newton, N. Dak.; thence via the line of the Chicago & North Western Railway to Oakes, N. Dak.; thence via the Minneapolis, St. Paul & Sault Ste. Marie Railway to Monango, N. Dak.; thence via the Chicago, Milwaukee & St. Paul Railway to Edgeley, N. Dak.; thence via the Chicago, Milwaukee & St. Paul Railway to Monango; thence via the Minneapolis, St. Paul & Sault Ste. Marie Railway to Wishek, N. Dak.; thence via an imaginary line through Linton, N. Dak., and Mobridge and Gettysburg, S. Dak.; thence via the Chicago & North Western Railway to Pierre, S. Dak.; thence following the north bank of the Missouri River to its intersection with the west boundary of transcontinental group F; thence following the west boundary of group F to the southeast corner of the state of Kansas; thence along the west boundary of the state of Missouri to the northwest corner of the state of Arkansas; thence along the west side of the Kansas City Southern Railway to the Gulf of Mexico.

On traffic to north Pacific terminals the east boundary of zone 1 shall be the following line:

(b) Beginning at the intersection of the north boundary of the state of Minnesota with the northwest shore of Lake Superior; thence following the northwest shore of Lake Superior to a point immediately east of Superior, Wis.; thence following the east boundary of transcontinental group F, as described in transcontinental tariff 4-K, of R. H. Countiss, agent, I. C. C. No. 984, to Asbury, Mo.; thence along the west boundary of the state of Missouri to the northeast corner of the state of Oklahoma; thence along the north boundary of Oklahoma and the east boundary of the state of New Mexico to the southeast corner of New Mexico; thence westerly along the south boundary of New Mexico to El Paso, Tex.

On traffic to California terminals zone 2 shall include all that territory lying east of line (a) above described and west of a line called line (c), which begins at the international boundary between the United States and Canada immediately west of Cockburn Island in Lake Huron; passes westerly through the Straits of Mackinaw; southerly through Lake Michigan to its southern boundary; follows the west boundary of transcontinental group C to Paducah, Ky.; thence follows the east side of the Illinois Central Railroad to its intersection with the south boundary of group C; thence follows the east boundary of group C to the Gulf of Mexico.

On traffic to the north coast terminals zone 2 shall include all territory lying between lines (b) and (c).

Zone 3 includes all territory in the United States lying east of line (c) and north of the south boundary of transcontinental group C and on and west of line (d), which is the Buffalo-Pittsburgh line from Buffalo, N. Y., to Wheeling, W. Va., marking the western boundary of trunk line freight association territory; thence follows the Ohio River to Huntington, W. Va.

Zone 4 includes all territory in the United States east of line (d) and north of the south boundary of transcontinental group C.

Zone 5 includes all that territory in the United States south and east of transcontinental group C.

It is further ordered, That those portions of the above-numbered applications that requested authority to maintain higher commodity rates except upon commodities as hereinafter specified, from points in zone 1 to intermediate points than to Pacific coast terminals be, and the same are hereby, denied, effective May 1, 1915.

It is further ordered, That the petitioners herein be, and they are hereby, authorized to establish and maintain commodity rates from all points in zones 2, 3, and 4, as above defined, to points intermediate to Pacific coast terminals that are higher to intermediate points than to Pacific coast terminals, provided that on and after May 1, 1915, except as hereinafter specified, the rates to intermediate points from points in zones 2, 3, and 4 shall not exceed the rates on the same commodities from the same points of origin to the Pacific coast terminals by more than 7 per cent from points in zone 2, 15 per cent from points in zone 3, and 25 per cent from points in zone 4.

It is further ordered, That petitioners herein be, and they are hereby, authorized to establish the carload rates proposed in their application, as shown in the appendix to this report, on the following commodities: Calcium chloride, No. 485; iron and steel articles, No. 2030½; iron and steel articles, Nos. 2065, 2335, 2340; billets, blooms, ingots, etc., No. 2075-A; bolts, nuts, washers, etc., No. 2110; nails and spikes, No. 2245-C; pipe fittings and connections, No. 2260-A; cast-iron pipe and connections, No. 2265; wrought-iron pipe, No. 2270-A; cast-iron pipe and connections (new number); iron and steel articles, Nos. 2080 and 2085; box straps, shingle bands, baling ties, Nos. 2115, 2370-B, and 2430-B; shoes, horse, mule, and oxen, No. 2375; tubing, open seam, n. o. s., No. 2445; strawboard, n. o. s., No. 3325; ship and boat spikes, No. 3960; soda ash, No. 4045-A; tin and terne plate, No. 4375-A; wire and wire goods, No. 4780-B; wire, iron, plain, galvanized, etc., No. 4795-D; wire rods, No. 4825; zinc spelter, No. 4885; steel rails, No. 1340; rail fastenings, No. 1341, from points in zone 1 to Pacific coast terminals which are lower than

the rates on like traffic to intermediate points, provided that on and after May 1, 1915, the rates to intermediate points in no instance exceed 75 cents per 100 pounds.

It is further ordered, That petitioners herein be, and they are hereby, authorized to establish or continue the carload rates proposed in their application for additional relief as shown in the appendix to this report on all the commodities listed under schedule C, except rice, window glass, saws, saw plates, stacker ladders, coal, and pig iron, shown in the appendix to this report as items Nos. 3650, 1695-A, 3845, 3860, 4095, 850, 2255-A, and except also the 27 items concerning which the application for additional relief has been withdrawn from points in zones 2, 3, and 4 to Pacific coast terminals, and to continue higher rates on the same commodities to intermediate points, provided that on and after May 1, 1915, the rates to intermediate points do not exceed the rates from the Missouri River to the same destinations by more than 15, 25, and 35 cents per 100 pounds from points in zones 2, 3, and 4, respectively.

It is further ordered, That the request for additional relief respecting the rates on rice, window glass, saws, saw plates, and stacker ladders, shown as items Nos. 3650, 1695-A, 3845, 3860, and 4095 in the appendix to this report, be, and the same is hereby, denied, effective May 1, 1915.

It is further ordered, That the petitioners herein be, and they are hereby, authorized to establish and maintain the rates proposed in their application as shown in the appendix to this report on coal and pig iron to Pacific coast terminals, and to continue higher rates to intermediate points, provided that on and after May 1, 1915, the rates to such intermediate points do not exceed 5 mills per ton-mile.

It is further ordered, That petitioners herein be, and they are hereby, authorized to establish the less-than-carload commodity rates named in their application for additional relief, as shown in the appendix to the report, from points in zone 1 to Pacific coast terminals, and to continue higher rates to intermediate points on all articles listed as first or second class in western classification upon which the rates to the terminals are less than \$1.50 per 100 pounds, and on all articles listed as third or lower class on which the rates to the terminals are less than \$1.25 per 100 pounds, provided that on and after May 1, 1915, the rates to intermediate points on all such first and second class articles do not exceed \$1.50 per 100 pounds, and on all such third or lower class articles \$1.25 per 100 pounds.

It is further ordered, That petitioners herein be, and they are hereby, authorized to establish the less-than-carload commodity rates proposed in their application for additional relief, as shown in the appendix to this report, from points in zones 2, 3, and 4 to Pacific

coast terminals, and to continue higher rates to intermediate points, provided that on and after May 1, 1915, the rates to intermediate points do not exceed the rates from the Missouri River to the same destinations by more than 25, 40, and 55 cents per 100 pounds from points in zones 2, 3, and 4, respectively.

It is further ordered, That the degree of deviation herein permitted as between the terminal rates herein approved and the maximum intermediate rates herein authorized shall be the maximum amount by which these petitioners are permitted to depart from the rule of the fourth section, and the disparity between the rates to the terminal points and to intermediate points shall not be widened except under further orders of the Commission.

It is further ordered, That in the observance of this order as to the rates on schedule C commodities the Pacific coast terminals shall consist of San Diego, Wilmington, East Wilmington, San Pedro, San Francisco, and Oakland, Cal., Portland, Oreg., Tacoma and Seattle, Wash., only.

It is further ordered, That petitioners herein operating routes from eastern defined territories to points intermediate to Pacific coast terminals so situated as to necessitate the routing of traffic from lower rated through higher rated zones be, and they are hereby, authorized to establish via such routes rates authorized herein on the commodities named in the report, and to disregard the long-and-short-haul rule of the fourth section to the extent necessary to permit such routing.

And it is further ordered, That tariffs containing rates revised in accordance with the terms of this order shall be made effective on statutory notice.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

INTERSTATE COMMERCE COMMISSION.

FOURTH SECTION APPLICATION No. 9813.

**RATES ON ASPHALTUM, BARLEY, BEANS, AND CANNED
GOODS FROM PACIFIC COAST POINTS TO ATLANTIC
PORTS.**

FOURTH SECTION APPLICATION No. 9813.

RATES ON ASPHALTUM, BARLEY, BEANS, AND CANNED GOODS FROM PACIFIC COAST POINTS TO ATLANTIC PORTS.

Submitted February 6, 1915. Decided March 30, 1915.

Petitioners authorized to establish rate of 40 cents per 100 pounds on asphaltum, barley, beans, and canned goods from San Francisco, San Pedro, and Wilmington, Cal., via lines of Southern Pacific Company and the Galveston, Harrisburg & San Antonio Railway Company to Galveston, Tex.; thence via steamship line to New York, N. Y., Philadelphia, Pa., Baltimore, Md., Boston, Mass., and Charleston, S. C., while continuing higher rates from, to, and between intermediate points.

F. H. Wood and C. W. Durbrow for petitioners.

Seth Mann for San Francisco Chamber of Commerce.

G. J. Bradley for Merchants & Manufacturers Association of Sacramento.

W. H. Metson, M. A. Coles, and Charles Clifford for shippers of wine in barrels.

F. M. Hill for Fresno Traffic Association.

S. E. Semple for Stockton Chamber of Commerce.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

By the above-numbered application the Southern Pacific Company and its affiliated lines seek authority to establish a rate of 40 cents per 100 pounds in carloads, minimum 80,000 pounds, on asphaltum, barley, beans, and canned goods from San Francisco, San Pedro, and Wilmington, Cal., via rail to Galveston, Tex., and steamer thence to Charleston, S. C., Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass. This route will hereinafter be called the Sunset Gulf route.

The present rates on these commodities from the California ports are the same as the rates from intermediate points to the same destinations. The following table shows the present rates, per 100 pounds, from California points to the destinations named and to

intermediate points via the Sunset Gulf route and via the various all-rail routes:

Commodity and destination.	Rate.	Carload minimum.
<i>Pounds.</i>		
Asphaltum, to—		
New York City.....	\$0.50	70,000
Transcontinental groups A, B, and C.....	.60	80,000
Groups D to J.....	.55	80,000
Barley, to—		
Groups A to C.....	.70	40,000
Groups D to E.....	.82½	40,000
Groups F to J.....	.55	40,000
Beans, to groups A to J.....	.55	40,000
Canned goods other than salmon, to groups A to J.....	.55	40,000
Canned salmon, to groups A to J.....	.70	60,000

It is proposed in the application to apply the 40-cent rate on these commodities only from the terminals named and to construct rates from intermediate points by adding to the 40-cent rate the local rates from the different points of origin to the nearest Pacific coast terminal. This method of constructing the rates results in the following-named rates per 100 pounds to the Atlantic seaboard, via Sunset Gulf route, from some of the representative points of origin:

Commodity and point of origin.	Rate.	Commodity and point of origin.	Rate.
Asphaltum, from—		Beans, from—Continued.	
Richmond.....	\$0.42½	Gilroy.....	\$0.55
Avon.....	.46	Watsonville.....	.55½
Coalinga.....	.60	Los Angeles.....	.45
Meltha.....	.55	Pomona.....	.54
Oil City.....	.55	Santa Barbara.....	.55½
Edna.....	.50	Fillmore.....	.60
Santa Maria.....	.55	Canned goods, from—	
Los Angeles.....	.43½	San Jose.....	.44
Santa Barbara.....	.50	Berkeley.....	.45
Barley, from—		Stockton.....	.47
Stockton.....	.44½	Sacramento.....	.47½
Sacramento.....	.47½	Chico.....	.65½
Fresno.....	.53½	Fresno.....	.67½
Paso Robles.....	.55	Bakersfield.....	.67½
Santa Barbara.....	.56½	Santa Clara.....	.45
Fillmore.....	.56½	Watsonville.....	.58
Beans, from—		Monterey.....	.57
Stockton.....	.45	Los Angeles.....	.45
Sacramento.....	.47½	Pomona.....	.53½
Chico.....	.67½		

The intermediate territory which will be affected by the proposed readjustment of rates is that lying along the line of the Southern Pacific Company in California, Arizona, and New Mexico, and along the line of the Galveston, Harrisburg & San Antonio Railway Company in Texas. The highest rate to any intermediate point on these lines is, on asphaltum and barley, 55 cents; on beans and on canned goods other than salmon, 85 cents; and on canned salmon, 70 cents. The highest rate from any intermediate point to the Atlantic coast

is 55 cents on asphaltum, 70 cents on barley, 85 cents on beans and canned goods other than salmon, and 70 cents on canned salmon.

The justification urged in support of this application is the greatly increased competition between the west and the east coasts since the opening of the Panama Canal. The present rate by sea on all these commodities is 30 cents per 100 pounds. The great disparity between rates applied by the rail lines and those afforded by the water lines has had the effect of diverting a large proportion of this tonnage from the rail lines to their obvious disadvantage. Below are shown the respective tonnages of these commodities carried by the Sunset Gulf route, the Southern Pacific all-rail line, and by the water lines during the fiscal years ending June 30, 1912, 1913, and 1914, and for the last six months of the year ending December 31, 1914:

	1912	1913	1914	July to Dec., 1914.
Asphaltum:	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>
Via Sunset Gulf route.....	6,033	5,864	4,625	450
Via all rail.....	37,714	37,792	30,905	7,751
Via water.....	12,103	10,136	16,106	5,190
Barley:				
Via Sunset Gulf route.....	0	0	0	0
Via all rail.....	91,381	3,654	15	1,435
Via water.....	114,981	100,735	45,449	29,754
Beans:				
Via Sunset Gulf route.....	9,564	2,733	1,803	1,006
Via all rail.....	56,373	45,638	44,678	31,341
Via water.....	7,755	8,520	8,663	20,817
Canned goods other than salmon:				
Via Sunset Gulf route.....	923	1,816	963	432
Via all rail.....	54,952	54,509	60,722	41,436
Via water.....	51,354	50,880	53,478	80,443
Canned salmon:				
Via Sunset Gulf route.....	390	802	877	216
Via all rail.....	7,418	14,385	10,533	3,802
Via water.....	42,023	16,738	31,755	33,539

It will be observed from the above statement that the Sunset Gulf route in the three years preceding the opening of the Panama Canal moved 10 per cent of the asphaltum, 7 per cent of the beans, 1.1 per cent of the canned goods other than salmon, and 1.8 per cent of the canned salmon, while for the period July 1 to December 31, 1914, during only four and one-half months of which the Panama Canal has been open, the Sunset Gulf route has taken but 3.3 per cent of the asphaltum, 1.8 per cent of the beans, 0.34 per cent of the canned goods other than salmon, and 0.57 per cent of the salmon. In other words, this route has lost to the canal route since July 1, 1914, two-thirds of its former proportion of asphaltum traffic, three-fourths of its proportion of bean traffic, and two-thirds of its proportion of traffic in canned goods. On the other hand, the water routes have increased their proportion of the tonnage of asphaltum

from 23 to 38 per cent, of beans from 13 to 39 per cent, of canned goods other than salmon from 47 to 65 per cent, and of canned salmon from 72 to 89 per cent.

It is shown that there are approximately 40 ships in the service between the Pacific and the Atlantic coasts. Their time of transit varies from 20 to 27 days. This affords a service of approximately three boats a week each way between the two coasts. These boats have a tonnage capacity of from 5,000 to 10,000 tons each. With the low rate by water from these California ports to the Atlantic coast, the frequency of sailings, the short time of transit, the capacity of the ships in service, and the direct testimony showing the tonnage secured by the water carriers since the opening of the Panama Canal, there can be no doubt of the compelling nature of this water competition. If the rail-and-water route via Galveston is to secure any of this tonnage, it can do so only by meeting in some degree the competition offered. All of the canned salmon and a very large percentage of the canned goods originate at points in close proximity to the California ports. Nine-tenths of the asphaltum moves to the ports on rates of 15 cents or less. Two-thirds of the beans grown in California are produced in territory contiguous to Los Angeles and move to the port of San Pedro at a rate of 20 cents or less.

The rate proposed by the petitioners is lower than any rate of which we are advised heretofore offered by any all-rail line or by this rail-and-water line between the two coasts. The establishment of this rate from the ports and the establishment of rates from intermediate points made by combination on the ports will have the effect of securing some of this traffic to the petitioning line and at the same time of providing a greatly reduced rate from many of the intermediate stations in California.

The proposed rate from the ports, however, is so low as to invite the query as to whether it is sufficient to pay the out of pocket costs incurred in the movement of this traffic. Prior to the filing of this application an investigation was conducted by the officers of the Southern Pacific Company to ascertain as nearly as possible the out of pocket costs incurred in the handling of this freight. The haul from San Francisco to Galveston is 2,160 miles, while the average haul of all freight on that line is but 220 miles. Fairly complete and detailed records are kept by the company concerning this line, showing the actual costs of operation for each 100 gross ton-miles. This gross ton-mileage is obtained by multiplying the distance traveled by each freight locomotive by the gross weight hauled by such locomotive. These costs are reduced to the equivalent costs per car-mile for the car loading here contemplated. For the two years ending June 30, 1914, it was shown that the average cost on

this division of the road for a car of the weight and loading contemplated for this traffic was:

	Cents per car-mile.
For wages of trainmen, engine crews, fuel, locomotive repairs, lubrication, locomotive supplies, and locomotive engine house service	4.97
For maintenance of cars and lubrication.....	1.50
For loss and damage to freight.....	.57
For clearing of wrecks, damage to property and stock, and personal injuries....	.13
For yard expenses.....	1.52
For station expenses, wages, station agents, clerical force, station labor, and supplies.....	2.30
For maintenance of way and structures.....	1.05
Total.....	9.04

The addition of these several items shows a total out of pocket cost per car-mile for the handling of this freight from San Francisco to Galveston of 9.04 cents. Multiplying the distance of 2,160 miles by the cost per car-mile gives \$195.26 as the out of pocket cost of transporting this car, or \$4.88 per net ton. During the two years ending June 30, 1914, the average steamer cost for the transportation of freight from Galveston to New York was \$2 per ton. This charge includes maintenance, fuel, unloading, loading, dockage, wages of crew, and all the expenses incident to the transportation of this freight between the ports named. It is analogous to the train expenses and station expenses of a railroad. It is not thought that the acceptance of this traffic would result in an additional cost per ton as great as \$2. Upon the assumption, however, that the actual additional cost of transporting this freight from Galveston to the Atlantic seaboard is as much as \$2 per ton, it appears that the total additional cost of moving this traffic from San Francisco to New York via this route does not exceed \$6.88 per ton. The rate proposed is \$8 per ton, apparently resulting in an excess of revenue above the additional cost of handling of at least \$1.12 per ton.

While the above analysis may not be altogether conclusive in showing the actual additional cost of transporting this freight from San Francisco to New York, it is fairly convincing that such additional costs do not exceed the figure named.

The yard expenses per car-mile charged to this freight are 50 per cent of the usual yard expenses. The haul is nearly ten times the average haul upon the system, and it would not be unreasonable to

¹ Assumed to be, on account of this long haul, but one-half the usual yard expenses, as shown by the records of this company.

² Estimated to be but one-fourth the usual expenses incident to handling freight on this line, as shown by the company's records.

³ This figure is but one-third the usual expenses chargeable to the freight traffic. It is made upon the assumption that two-thirds of the cost of the upkeep of track and structures is due to obsolescence and the action of the elements and but one-third due to traffic on the rails.

conclude that the yard expenses on this freight are considerably less than are here assigned.

The station expenses are here assumed to be but one-fourth the usual station expenses on the system. These expenses are nearly all incurred at the points of origin and delivery of the freight, and the cost of this service per car-mile for this haul of 2,160 miles can hardly be more than the cost here assigned.

The maintenance of way expenses here assigned are but one-third of the usual expenses chargeable to freight traffic. It may be said, however, that the proper condition of the track must be maintained whether this carrier hauls any of this traffic or not. It is a matter of some doubt whether the acceptance of this freight makes any appreciable addition to the expenses of this maintenance. It was, however, assumed that this traffic should bear its proportionate share of that portion of the expense of maintenance said to be chargeable to the movement of trains over the line. The testimony does not show how the conclusion was reached that one-third of the cost of maintenance of way was chargeable to the movement of trains and two-thirds to obsolescence and the action of the elements, and the claim is perhaps not susceptible of full demonstration.

The present system of blanketing the rail rates from all California points of origin on these commodities has been generally satisfactory and should not be departed from unless the circumstances clearly justify such action. It is shown, however, by this testimony that the new rates and service via the Panama Canal have effectually broken the blanket. More than 95 per cent of the traffic moved by these lines from California points to the Atlantic seaboard and 65 per cent of the traffic to all eastern defined territory in these commodities is now moving via the Panama Canal. Traffic originating at interior California points pays a rail rate to the ports, and the total charge from an interior point of origin to the Atlantic seaboard exceeds the charge on the same traffic from a California port by the amount of this local rate. The disadvantage at which this interior point is now shipping will not be increased if the Sunset Gulf route is permitted to readjust its rates as proposed in this application. For example, the rate on canned goods from Fresno to San Francisco is 27½ cents per 100 pounds. The rate to New York via San Francisco and the Panama Canal is 57½ cents. The rate to New York via the Sunset Gulf route is 85 cents. If this application be granted, the rate from Fresno via the Sunset Gulf route will be 67½ cents, as compared with the present rate of 85 cents. The shipper at Fresno will have been placed more nearly on an equality with his San Francisco competitor than he is at present. The present rates on which the traffic is moving on these commodities from California points to the Atlantic coast are

the rates controlled by the water lines. These lines must be looked upon, so far as this traffic is concerned, as the rate-making lines between the two seaboards.

Protestants from certain interior California cities appeared at the hearing, but offered no testimony in opposition to the application. It has been shown that this carrier can not secure any considerable share of this traffic from the California ports at a higher rate than is here proposed; that this rate, although relatively low, probably yields some revenue in excess of the actual out of pocket costs; and the proposed rates from, to, and between intermediate points do not appear to unjustly discriminate against such points. We are unable to see how any interest at any intermediate point will be adversely affected if this application be granted. We shall, therefore, authorize this carrier to establish the rates proposed in its application. An order will be entered in consonance with the views herein expressed.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 30th day of March, A. D. 1915.

FOURTH SECTION ORDER No. 4767.**COMMODITY RATES FROM CALIFORNIA POINTS TO ATLANTIC PORTS.**

By Fourth Section Application No. 9813, the Southern Pacific Company and its affiliated lines seek authority to establish a rate of 40 cents per 100 pounds in carloads, minimum 80,000 pounds, on asphaltum, barley, beans, and canned goods from San Francisco, San Pedro and Wilmington, Cal., via rail to Galveston, Tex., and steamer thence to Charleston, S. C., Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass., and to continue higher rates from, to, and between intermediate points. A public hearing having been held, and full investigation of the matters and things involved in the above-described application having been had, and the Commission having, on the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the petitioners, Southern Pacific Company, The Galveston, Harrisburg & San Antonio Railway Company, and Southern Pacific Company—Atlantic Steamship lines (Morgan line) be, and they are hereby, authorized to establish a rate of 40 cents per 100 pounds in carloads, minimum 80,000 pounds, on asphaltum, barley, beans, and canned goods from San Francisco, San Pedro, and Wilmington, Cal., via rail to Galveston, Tex., and steamer thence to Charleston, S. C., Baltimore, Md., Philadelphia, Pa., New York, N. Y., and Boston, Mass., and to continue higher rates from, to, and between intermediate points, provided the present rates from, to, and between intermediate points shall not be increased, and provided further, that rates from intermediate points to the Atlantic ports named shall not exceed the lowest combination on the California ports named.

It is further ordered, That tariffs containing rates established in accordance with the terms of this order shall be made effective on statutory notice.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,

Secretary.

INTERSTATE COMMERCE COMMISSION.

COMMODITY RATES TO PACIFIC COAST TERMINALS AND INTERMEDIATE POINTS.

FOURTH SECTION APPLICATIONS NOS. 205, 342, 343, 344, 349, 350, AND 352.

IN THE MATTER OF APPLICATIONS FOR RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE, AS AMENDED JUNE 18, 1910, WITH RESPECT TO COMMODITY RATES FROM EASTERN DEFINED TERRITORIES TO PACIFIC COAST TERMINALS AND INTERMEDIATE POINTS.

Submitted April 13, 1915. Decided April 30, 1915.

1. Plans suggested for constructing rates to intermediate back-haul points not approved. Carriers authorized to construct such rates by adding to terminal rates not more than 75 per cent of the local rates from the nearest terminal to destination, or by adding arbitraries to the terminal rates, varying with distance from the ports, such arbitraries to be not more than 75 per cent of the local rates, the aggregate not to exceed the maximum prescribed for intermediate points in this order.
2. Carriers authorized to extend terminal rates to the following Pacific coast ports: San Diego, San Pedro, East San Pedro, Wilmington, East Wilmington, San Francisco, and Oakland, Cal.; Astoria and Portland, Oreg.; Vancouver, Bellingham, South Bellingham, Everett, Tacoma, Seattle, Aberdeen, Hoquiam, and Cosmopolis, Wash.
3. Report and order of January 29, 1915, so modified as to permit maximum less-than-carload rates from the Missouri River to intermediate points on first and second class commodities of \$1.72 per 100 pounds when lower rates are applicable to coast terminals.

Appearances the same as in the original report, and in addition thereto, the following:

S. H. Brown for Union Bag & Paper Company.

F. M. Freer for Cincinnati Chamber of Commerce.

S. A. D. Glasscock for Bellingham Chamber of Commerce.

P. M. Hanson for National Enameling & Stamping Company.

J. T. McChesney for Everett Commercial Club.

J. W. McClune for Transportation Bureau of Tacoma Commercial Club.

W. P. Trickett and *T. A. McGrath* for Minneapolis Civic and Commercial Association.

F. W. Maxwell for Denver Transportation Bureau.

W. A. Mears for Seattle Chamber of Commerce.

Harry T. Mulloy for Fels & Company.

H. H. Williams and *B. F. Seggerson* for State Corporation Commission of New Mexico.

J. N. Teal for Chamber of Commerce of Portland and Astoria, Oreg., and Vancouver, Wash.

A. G. Young for American Sheet & Tin Plate Company.

F. H. Truax for Simmons Manufacturing Company and Metal Bed Association.

SECOND SUPPLEMENTAL REPORT OF THE COMMISSION.

BY THE COMMISSION:

In our report of January 29, 1915, in the above-entitled case, 32 I. C. C., 611, a suggestion was made that rates on schedule C commodities from eastern defined territories to stations intermediate to Pacific coast terminals in what was called back-haul territory might be made something less than full combination on the coast terminals. The carriers were asked to submit to the Commission a plan for the construction of rates to such intermediate points.

The lines leading to California terminals proposed to deduct from the terminal commodity rates 7 cents per 100 pounds, carloads, and 10 cents per 100 pounds, less than carloads, for basing rates, and to add thereto the full local rate from nearest terminal point to destination; this basis to apply eastward from the terminal until the point is reached at which the prescribed maximum rate is the same or less; the rate to a back-haul point not to be less than that to the terminal point.

The north coast lines submitted the following plan:

1. Rates to points in group 2 as shown in Transcontinental Freight Bureau tariff 4-L to be made by adding to the terminal rates not more than 5 cents per 100 pounds for carload shipments and 10 cents per 100 pounds for less-than-carload shipments.

2. The rates to points in group 3 as shown in Transcontinental Freight Bureau tariff 4-L to be made by using terminal basing rates 5 cents on carload and 10 cents on less-than-carload shipments less than the rates to Pacific coast terminals, and adding thereto the lowest rate applying from any Pacific coast terminal point; the rate thus made not to be less than that for a similar shipment to group 2 points as above stated, or more than that for a similar shipment to group 4 points as hereinafter stated.

3. The Washington-Idaho line to be the eastern boundary of group 4, except that the group would include points on the line of the Northern Pacific Railway from Pullman, Wash., to Lewiston, Idaho. Rates to points in group 4 to be made by the same method as to group 3, excepting on a limited list of carload commodities, embracing staple articles which are regularly shipped by sea upon which lower

rates are necessary to insure direct movement from the east and permit reasonable competition in the distribution from group 4 points as against shipment by sea and subsequent distribution of the same commodities from Pacific coast ports. This list of proposed commodity rates is designated schedule C-2, and is as follows. Rates are stated per 100 pounds:

Items as shown in Transcontinental Freight Bureau tariff 4-L.	From Chicago.	From Pittsburgh.	From New York.
Canned goods, minimum 40,000 pounds, items 260 to 306.....	\$0.80	\$0.90	\$1.00
Coffee, green, minimum 40,000 pounds, item 390.....	.80	.90	1.00
Articles of iron and steel, including wire and nails:			
Minimum 30,000 pounds, items 632, 638, 666, 678, 680, 686, 688, 702, 704.....	.70	.75	.80
Minimum 50,000 pounds, items 632, 676, 678, 680.....	.80	.85	.90
Lye, concentrated, minimum 40,000 pounds, item 700.....	.90	.90	1.00
Paper, minimum 40,000 pounds, as described in items 806 and 876.....	.90	.90	1.00
Soap, minimum 40,000 pounds, item 1046.....	.80	.90	1.00
Starch, minimum 40,000 pounds, item 1058.....	.90	1.00	1.10

4. An additional group to be provided to include those points on each road which are situated east of the eastern boundary of group 4, as above described, and west of the Idaho-Montana state line, the rates to points in this group, No. 5, to be made in the same manner as to points in group 4, but the rates on commodities named in schedule C-2 to be 10 cents per 100 pounds higher than the rates on the same commodities to points in group 4.

5. Rates from eastern defined territories to points east of the eastern boundary of group 5, as above described, to be limited by the maxima prescribed in the report and order of the Commission, but the rates on schedule C-2 commodities to be not more than 10 cents higher than on the same commodities to points in group 5.

The carriers also petition for modification of that part of the order which fixed maximum commodity rates upon less-than-carload shipments from Missouri River points to points intermediate to the Pacific coast. They ask for authority to establish as maxima on less-than-carload commodities from the Missouri River to intermountain territory rates made by taking 80 per cent of the present class rates from the Missouri River to Reno, Phoenix, and Spokane. This would result in rates, in cents per 100 pounds, of—

Class.....	1	2	3	4
Cents.....	200	173	146	126

Hearing on these proposals has been held, at which a full discussion was had concerning the merits thereof and objections thereto. The plan for constructing rates to back-haul points proposed by the lines leading to the California terminals would create a zone contiguous to the terminals to which terminal rates would apply. The

extent of this zone would be limited by the distances to which local rates of 7 cents, carloads, and 10 cents, less than carloads, would reach. It would, however, in substance include all of the points that have heretofore been accorded terminal rates. East of the easterly boundary of this zone the rates would increase with distance from the coast until they reached the maximum rates prescribed to intermountain points. Objection was made to this plan by the representative of the interests at the terminal cities upon the ground that it would have the effect of taking from the actual terminals a natural geographical advantage and of giving to many interior points, by an artificial adjustment, rates to which they are not entitled. Representatives of Nevada points also expressed disapproval of the suggested plan.

The plan proposed by the north coast lines was objected to by the representatives of the north coast terminal cities upon the grounds that it does not accord with the suggestions of the Commission, and that the special rates under schedule C-2 are lower than the competition at these interior points necessitates and are proposed with the intent of giving to Spokane an undue advantage over its coast competitors in the distribution of freight in the surrounding territory. Objections were also voiced by representatives of the Missouri River cities. Upon the other hand, the representatives of the Spokane interests contended that the special list of rates proposed to Spokane and surrounding points would not have the effect of creating undue preference at Spokane, and that the list of schedule C-2 commodities should be increased in order to permit Spokane and other points similarly situated to distribute freight in the territory contiguous thereto. It was also urged that since the rates from the Missouri River and all eastern defined territories to the Pacific coast terminals are blanketed, Spokane should be accorded the same rates from all territory Chicago and east.

In our former report we stated:

* * * As we view it, the Panama Canal is to be one of the agencies of transportation between the east and the west, but not necessarily the sole carrier of the coast to coast business. If the railroads are able to make such rates from the Atlantic seaboard to the Pacific coast as will hold to their lines some portion of this traffic with profit to themselves, they should be permitted so to do. The acceptance of this traffic will add something to their net revenues, and to that extent decrease, and not increase, the burden that must be borne by other traffic. It will also give the shippers at the coast points the benefits of an additional and a competitive service.

We are fully mindful that one of the primary purposes of building this canal was to assist in the development and maintenance of an active, efficient, and profitable water service between the two coasts. We have carefully considered all of the criticisms and suggestions

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offered, and the testimony presented at the former hearing, and have reached the following conclusions:

1. We should authorize a certain degree of relief from the requirements of the long-and-short-haul clause on this traffic to enable these carriers to more effectively compete with the water lines, but the rail carriers can not expect, and the Commission should not authorize, such a degree of relief as will secure to the rail lines the same percentage of the traffic to the terminals as they enjoyed prior to the opening of the canal.

2. They can secure a portion of the traffic to the terminals on these commodities by the establishment of the rates proposed, and such rates will afford some revenue in excess of the out of pocket cost involved.

3. The carriers should, within reasonable limits, be authorized to make such rates to intermediate points in the so-called back-haul territory as will induce the direct movement of freight to such points from the territories served by these lines.

4. The proportion of the freight hauled directly by the rail lines to the various destinations in this back-haul territory should be greater than the proportion hauled to the terminals and should increase as distance from the coast terminals increases.

5. The rates to all the coast terminal points being practically the same, and the situations at intermediate points being substantially similar via all lines, the same method of constructing rates to intermediate points should be followed by all lines.

When the rates to the coast cities are lower than to intermediate points because of controlling water competition, every inland point should take rates higher than those to the port cities, either by arbitraries varying with distance from the nearest port city or by proportions of the local rates from such ports to destinations. These rates should be fairly graded from the ports to the interior. We shall authorize the establishment of rates to back-haul points constructed by adding to the full rates to the terminals, arbitraries varying with distance, but not exceeding 75 per cent of the local rates from the nearest terminal, the aggregate not to exceed the maximum which we have prescribed for intermediate points in this order.

In our former report, *supra*, we said that the terminal rates should be confined to the points at which the Atlantic-Pacific steamship lines deliver their freight. At the time the testimony was taken the Panama Canal had been open but a few weeks, and the record then showed the delivery of this freight only at certain points. Proof has since been offered showing the delivery and receipt of this freight at East San Pedro, Cal.; Astoria, Oreg.; Vancouver, Bellingham,

South Bellingham, Everett, Aberdeen, Hoquiam, and Cosmopolis, Wash. The carriers serving these points have conceded that these points are entitled to the same rates as other terminal points. The circumstances and conditions at the points named appear to be similar to those found at the points named as terminals in the former report, and the order will be modified so as to permit the establishment of the terminal rates proposed to the points above named.

Our former report authorized the carriers to establish certain less-than-carload commodity rates to Pacific coast ports lower than those to intermediate points, with the proviso that where the rates on articles classified as first or second class in western classification from the Missouri River to the Pacific coast were \$1.50 per 100 pounds or more the rate to the Pacific coast should be the maximum at intermediate points; that in those instances in which the rates on such commodities were less than \$1.50 per 100 pounds the rates to intermediate points should not exceed \$1.50 per 100 pounds; that in those instances in which rates were made on commodities classified as third or fourth class from the Missouri River to the Pacific coast of \$1.25 or more per 100 pounds such rates must be maxima at intermediate points; and that in those instances in which the rates on such commodities to the Pacific coast were less than \$1.25 per 100 pounds the latter figure would constitute the maximum rate to intermediate points. In making rates from territories east of the Missouri River the carriers were authorized to add to the rates made from the Missouri River to intermediate points differentials of 25, 40, and 55 cents per 100 pounds from Chicago, Pittsburgh, and New York, respectively.

The carriers now ask modification of the restrictions as to the rates to intermediate points so that it may not be necessary to reduce any of the present rates to Salt Lake City, Utah, on either carload or less-than-carload commodities. In support of this petition it is urged that the Commission established many of the rates to Salt Lake City in *Commercial Club of Salt Lake City v. A., T. & S. F. Ry. Co.*, 19 I. C. C., 218. It is also urged that in a proceeding respecting class and commodity rates to Salt Lake City and other points, 32 I. C. C., 511, the Commission approved certain increases in some of these rates.

The rates established in the *Commercial Club of Salt Lake City case*, *supra*, were carload rates. Some of them were higher and some were lower than the maxima prescribed in the instant case. On the whole, however, the present rates to Salt Lake City on the majority of the more important commodities in this list are lower than the rates authorized to intermediate points in the present case. We are of the opinion that the order in this case with respect to carload rates should not be modified as requested.

A representative of the shipping interests of Denver, Colo., urged that the carriers be given sufficient relief from the requirements of the fourth section, particularly as to the less-than-carload commodity rates, to permit the maintenance of the present rates to Salt Lake City and all territory east thereof. There are comparatively few less-than-carload commodity rates from eastern defined territories to Salt Lake City. Not more than 25 per cent of the less-than-carload commodities on the list here considered are covered by commodity rates to Salt Lake City, and whatever movement of these commodities may occur to that point is under the class rates. These rates on the first four classes, respectively, from the Missouri River to Salt Lake City are \$2, \$1.70, \$1.50, and \$1.26 per 100 pounds. The rates proposed on these commodities to the Pacific coast vary from \$1.10 to \$1.75 per 100 pounds, and apply from all territories, Missouri River and east. The proposed rate to the coast on many of the first and second class items is \$1.50, and on a large part of the third and fourth class items it is \$1.25 per 100 pounds.

In authorizing these carriers to establish these rates to the Pacific coast, it is at the same time our duty to establish reasonable limitations upon the rates which may be applied on the same articles to intermediate points. The commodity rates proposed to the coast are so far below the class rates applying upon the same articles that any proper limitation of rates to intermediate points must, of necessity, in many instances restrict the rates to intermediate points to figures materially below the class rates. At the same time, since the transportation conditions under which these articles move under these less-than-carload commodity rates are in all respects similar to the conditions under which they move under class rates, the limitations in the rates to intermediate points may well vary with the class to which the commodity belongs. We are speaking of rates to that territory of which Phoenix, Ariz., Reno, Nev., and Spokane, Wash., are representative. The rates from the Missouri River on the first four classes to these points are, respectively, \$2.50, \$2.17, \$1.83, and \$1.58 per 100 pounds. The limitation which we have placed on third and fourth class articles produces a maximum rate from the Missouri River to these points which is approximately 80 per cent of the fourth-class rate, and the limitation which should be placed upon the rates on first and second class articles from the Missouri River to the same territory might properly bear approximately the same relation to the second-class rate. This will produce a maximum rate on first and second class articles from the Missouri River to intermediate points in those instances in which lower rates are applied to the Pacific coast of \$1.72 per 100 pounds.

We are not desirous of disturbing the commercial relation between Salt Lake City and Denver, which has been the subject of some litigation.

tion. The demands of other intermediate territories and the principles of the law, however, impel us to prescribe in these cases in which relief is afforded from the requirements of the long-and-short-haul rule the extent to which the carriers may be relieved. Our former order will be so modified as to permit the maintenance of a maximum less-than-carload commodity rate of \$1.72 per 100 pounds from the Missouri River to intermediate points in those instances in which lower rates are made from the Missouri River to the coast terminals upon commodities in this list that are rated first or second class. On all such articles taking rates of \$1.72 or more from the Missouri River to the coast terminals the rate to the terminals must be the maximum to intermediate points. Rates from the territories east of the Missouri River to the intermediate points may exceed the rates from the Missouri River by the differentials prescribed in our former report.

An order will be entered in consonance with the views above expressed.

ORDER.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 30th day of April, A. D. 1915.

AMENDED FOURTH SECTION ORDER No. 124.

IN THE MATTER OF APPLICATIONS Nos. 205, 342, 343, 344, 349, 350, AND 352, ON BEHALF OF CARRIERS PARTIES TO THE TARIFFS THEREIN NAMED, BY R. H. COUNTISS, C. W. BULLEN, AND J. F. TUCKER, THEIR AGENTS, FOR RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE ACT TO REGULATE COMMERCE, AS AMENDED JUNE 18, 1910, WITH RESPECT TO COMMODITY RATES FROM EASTERN POINTS OF SHIPMENT WHICH ARE HIGHER TO INTERMEDIATE POINTS THAN TO PACIFIC COAST TERMINALS.

COMMODITY RATES.

A public hearing having been held with reference to the justification for the additional relief sought by the carriers respecting the rates on commodities listed under schedule C, 32 I. C. C., 611, and full investigation of the matters and things involved having been had, and the Commission having, on January 29, 1915, made and filed a supplemental report containing its findings of facts and conclusions thereon, and having, under date hereof, made and filed a second supplemental report, which report together with the report of January 29, 1915, is hereby referred to and made a part hereof:

It is ordered, That amended Fourth Section Order No. 124, of January 29, 1915, by its terms made effective May 1, 1915, and by supplemental order of March 22, 1915, made effective June 1, 1915, be, and the same is hereby, amended to read as follows:

It is ordered, That for the purpose of disposing of these applications the United States shall be divided into five zones, known as zones 1, 2, 3, 4, and 5. On traffic to California terminals zone 1 shall include all that territory of the United States lying west of the following line:

(a) Beginning at the intersection of the north boundary of the state of Minnesota with the northwestern shore of Lake Superior; thence northwesterly along the shore of Lake Superior to a point immediately west of Duluth, Minn.; thence following the west boundary of transcontinental group D, as shown in transcontinental tariff No. 1-M, of R. H. Countiss, agent, I. C. C. No. 952, to its intersection with

the northern boundary of transcontinental group E; thence following the east boundary of group E to a point at or near Norwood, Minn.; thence following an imaginary line through Hutchinson, Minn., to Wilmar, Minn.; thence via the line of the Great Northern Railway through Benson, Morris, Herman, Yarmouth, and Moorhead, Minn.; thence along the line of the Great Northern Railway to Fargo, N. Dak.; thence to Yarmouth, Minn.; thence to Newton, N. Dak.; thence via the line of the Chicago & North Western Railway to Oakes, N. Dak.; thence via the Minneapolis, St. Paul & Sault Ste. Marie Railway to Monango, N. Dak.; thence via the Chicago, Milwaukee & St. Paul Railway to Edgeley, N. Dak.; thence via the Chicago, Milwaukee & St. Paul Railway to Monango; thence via the Minneapolis, St. Paul & Sault Ste. Marie Railway to Wishek, N. Dak.; thence via an imaginary line through Linton, N. Dak., and Mobridge and Gettysburg, S. Dak.; thence via the Chicago & North Western Railway to Pierre, S. Dak.; thence following the north bank of the Missouri River to its intersection with the west boundary of transcontinental group F; thence following the west boundary of group F to the southeast corner of the state of Kansas; thence along the west boundary of the state of Missouri to the northwest corner of the state of Arkansas; thence along the west side of the Kansas City Southern Railway to the Gulf of Mexico.

On traffic to north Pacific terminals the east boundary of zone 1 shall be the following line:

(b) Beginning at the intersection of the north boundary of the state of Minnesota with the northwest shore of Lake Superior; thence following the northwest shore of Lake Superior to a point immediately east of Superior, Wis.; thence following the east boundary of transcontinental group F, as described in transcontinental tariff 4-K, of R. H. Countiss, agent, I. C. C. No. 984, to Asbury, Mo.; thence along the west boundary of the state of Missouri to the northeast corner of the state of Oklahoma; thence along the north boundary of Oklahoma and the east boundary of the state of New Mexico to the southeast corner of New Mexico; thence westerly along the south boundary of New Mexico to El Paso, Tex.

On traffic to California terminals zone 2 shall include all that territory lying east of line (a) above described and west of a line called line (c), which begins at the international boundary between the United States and Canada immediately west of Cockburn Island in Lake Huron; passes westerly through the Straits of Mackinaw; southerly through Lake Michigan to its southern boundary; follows the west boundary of transcontinental group C to Paducah, Ky.; thence follows the east side of the Illinois Central Railroad to its intersection with the south boundary of group C; thence follows the east boundary of group C to the Gulf of Mexico.

On traffic to the north coast terminals zone 2 shall include all territory lying between lines (b) and (c).

Zone 3 includes all territory in the United States lying east of line (c) and north of the south boundary of transcontinental group C and on and west of line (d), which is the Buffalo-Pittsburgh line from Buffalo, N. Y., to Wheeling, W. Va., marking the western boundary of trunk line freight association territory; thence follows the Ohio River to Huntington, W. Va.

Zone 4 includes all territory in the United States east of line (d) and north of the south boundary of transcontinental group C.

Zone 5 includes all that territory in the United States south and east of transcontinental group C.

It is further ordered, That those portions of the above-numbered applications that requested authority to maintain higher commodity rates, except upon commodities as hereinafter specified, from points in zone 1 to intermediate points than to Pacific coast terminals be, and the same are hereby, denied, effective July 15, 1915.

It is further ordered, That the petitioners herein be, and they are hereby, authorized to establish and maintain commodity rates from all points in zones 2, 3, and 4, as above defined, to points intermediate to Pacific coast terminals that are higher to intermediate points than to Pacific coast terminals, provided that on and after July 15, 1915, except as hereinafter specified, the rates to intermediate points from points in zones 2, 3, and 4 shall not exceed the rates on the same commodities from the same points of origin to the Pacific coast terminals by more than 7 per cent from points in zone 2, 15 per cent from points in zone 3, and 25 per cent from points in zone 4.

It is further ordered, That petitioners herein be, and they are hereby, authorized to establish the carload rates proposed in their application, as shown in the appendix to the said report of January 29, 1915, on the following commodities: Calcium chloride, No. 485; iron and steel articles, No. 2030½; iron and steel articles, Nos. 2065, 2335, 2340; billets, blooms, ingots, etc., No. 2075-A; bolts, nuts, washers, etc., No. 2110; nails and spikes, No. 2245-C; pipe fittings and connections, No. 2260-A; cast-iron pipe and connections, No. 2265; wrought-iron pipe, No. 2270-A; cast-iron pipe and connections (new number); iron and steel articles, Nos. 2080 and 2085; box straps, shingle bands, baling ties, Nos. 2115, 2370-B, and 2430-B; shoes, horse, mule, and oxen, No. 2375; tubing, open seam, n. o. s., No. 2445; strawboard, n. o. s., No. 3325; ship and boat spikes, No. 3960; soda ash, No. 4045-A; tin and terne plate, No. 4375-A; wire and wire goods, No. 4780-B; wire, iron, plain, galvanized, etc., No. 4795-D; wire rods, No. 4825; zinc spelter, No. 4885; steel rails, No. 1340; rail fastenings, No. 1341, from points in zone 1 to Pacific coast terminals which are lower than the rates on like traffic to intermediate points, provided that on and after July 15,

1915, the rates to intermediate points in no instance exceed 75 cents per 100 pounds.

It is further ordered, That petitioners herein be, and they are hereby, authorized to establish or continue the carload rates proposed in their application for additional relief as shown in the appendix to said report of January 29, 1915, on all the commodities listed under schedule C, except rice, window glass, saws, saw plates, stacker ladders, coal, and pig iron, shown in said appendix as items Nos. 3650, 1695-A, 3845, 3860, 4095, 850, 2255-A, and except also the 27 items concerning which the application for additional relief has been withdrawn from points in zones 2, 3, and 4 to Pacific coast terminals, and to continue higher rates on the same commodities to intermediate points, provided that on and after July 15, 1915, the rates to intermediate points do not exceed the rates from the Missouri River to the same destinations by more than 15, 25, and 35 cents per 100 pounds from points in zones 2, 3, and 4, respectively.

It is further ordered, That the request for additional relief respecting the rates on rice, window glass, saws, saw plates, and stacker ladders, shown as items Nos. 3650, 1695-A, 3845, 3860, and 4095 in said appendix, be, and the same is hereby, denied, effective July 15, 1915.

It is further ordered, That the petitioners herein be, and they are hereby, authorized to establish and maintain the rates proposed in their application as shown in said appendix on coal and pig iron to Pacific coast terminals, and to continue higher rates to intermediate points, provided that on and after July 15, 1915, the rates to such intermediate points do not exceed 5 mills per ton-mile.

It is further ordered, That petitioners herein be, and they are hereby, authorized to establish the less-than-carload commodity rates named in their application for additional relief, as shown in said appendix to said report of January 29, 1915, from points in zone 1 to Pacific coast terminals, and to continue higher rates to intermediate points on all articles listed as first or second class in western classification upon which the rates to the terminals are less than \$1.72 per 100 pounds, and on all articles listed as third or lower class on which the rates to the terminals are less than \$1.25 per 100 pounds, provided that on and after July 15, 1915, the rates to intermediate points on all such first and second class articles do not exceed \$1.72 per 100 pounds, and on all such third or lower class articles \$1.25 per 100 pounds.

It is further ordered, That petitioners herein be, and they are hereby, authorized to establish the less-than-carload commodity rates proposed in their application for additional relief, as shown in said appendix, from points in zones 2, 3, and 4 to Pacific coast terminals, and to continue higher rates to intermediate points, provided that on and after July 15, 1915, the rates to intermediate points do not ex-

ceed the rates from the Missouri River to the same destinations by more than 25, 40, and 55 cents per 100 pounds from points in zones 2, 3, and 4, respectively.

It is further ordered, That the degree of deviation herein permitted as between the terminal rates herein approved and the maximum intermediate rates herein authorized shall be the maximum amount by which these petitioners are permitted to depart from the rule of the fourth section, and the disparity between the rates to the terminal points and to intermediate points shall not be widened except under further orders of the Commission.

It is further ordered, That, except as hereinbefore specified, petitioners herein be, and they are hereby, authorized to construct rates upon the commodities listed under schedule C, named in said report of January 29, 1915, from eastern defined territories to points intermediate to Pacific coast ports, by taking the full terminal rates and adding thereto arbitraries varying with distance from the nearest port not exceeding 75 per cent of the local rate from the nearest port to each destination, provided that in no case shall the rates constructed as above described exceed the maximum rates to intermountain points hereinbefore prescribed.

It is further ordered, That in the observance of this order as to rates on schedule C commodities the Pacific coast terminals shall consist of San Diego, Wilmington, East Wilmington, San Pedro, East San Pedro, San Francisco, and Oakland, Cal.; Astoria and Portland, Oreg.; Bellingham, South Bellingham, Everett, Aberdeen, Hoquiam, Cosmopolis, Tacoma, and Seattle, Wash., only.

It is further ordered, That petitioners herein operating routes from eastern defined territories to points intermediate to Pacific coast terminals so situated as to necessitate the routing of traffic from lower rated through higher rated zones be, and they are hereby, authorized to establish via such routes rates authorized herein on the same commodities, and to disregard the long-and-short-haul rule of the fourth section to the extent necessary to permit such routing.

And it is further ordered, That tariffs containing rates revised in accordance with the terms of this order shall be made effective on statutory notice.

By the Commission.

[SEAL.]

GEORGE B. MCGINTY,
Secretary.

Title of case.	Attorneys.
Merchants' and Manufacturers' Traffic Association of Sacramento et al. <i>vs.</i> United States of America et al.	John E. Alexander. Eq.: To suspend operation of order of Interstate Commerce Commission. Jos. W. Folk, for I. C. Jno. W. Preston, U. S. Attorney. Blackburn Esterline, Spec'l Asst. to the Atty. Gen'l.

Month.	Day.	Year.	Filings—Proceedings.
July,....	10	1915	Filed petition. Issued subpoena ad res. & 8 copies. Filed affidavit of J. G. Bradley. Filed affidavit of S. E. Sempie. Filed affidavit of W. D. Wall. Filed & entered order fixing time of hearing of application for stay. (O. B. 2, p. 350.)
"	14	"	Filed special appearance for purpose of challenging jurisdiction. Filed return of service. Filed affidavit of G. J. Bradley et al. Ord. application heard, objection to jurisdiction argued, & it was ordered that notice was not sufficient.
"	23	"	Filed amendment to petition. Filed affidavit of G. J. Bradley et al. Filed affidavit of G. J. Bradley. Filed affidavit of S. E. Sempie. Filed affidavit of W. D. Wall.
"	28	"	Filed & entered order to show cause. (O. B. 2, p. 355.)
414	11	1915	Filed motion to dismiss & answer of United States.
"	12	"	Filed stipulation ex. time. Filed motion to dismiss. Filed notice of motion. Filed & entered order setting place & date of hearing of motion. (O. B. 2, p. 393.)
"	13	"	Ord. application con. to 17. Filed appearance of I. C. C. Filed motion to dismiss & answer of I. C. C.
"	16	"	Ord. that Wm. W. Morrow, C. J., & Benj. F. Bledsoe, D. J., be called to assistance of judge of this court.
"	17	"	Filed petitioners' points, etc. Filed mo. of C. P. & R. I. Ry. to dismiss petition. Filed objections by U. S. to affidavits. Filed brief for I. C. C. Ord. application heard and cont'd.
"	18	"	Ord. application heard & submitted, briefs 5 & 3. Filed exhibit of I. C. C.
"	23	"	Filed brief of U. S.
Sept.	17	"	Filed notice of motion. Filed subpoena ad res. with marshal's returns showing service on S. P. Co. on July 14, 1915; on W. P. Ry. Co. on July 23, 1915; on A. T. & S. F. Ry. Co. on July 23, 1915; on Chicago, Rock Island & Pac. Ry. Co. on July 26, 1915; on Denver & B. G. R. R. Co. on July 28, 1915; & on Union Pacific R. R. Co. on July 24, 1915.
Dec.	8	"	Filed opinion of Morrow, C. J. Filed dissenting opinion of Bledsoe, D. J. Ord. application for injunction pendente lite granted, etc. Made & mailed copy of order to plff's atty. Made & mailed copy of order to U. S. Atty. Made & mailed copy of order to atty. for I. C. C. Made & mailed 2 copies of order to def't's attys
Jan.	6	1916	Filed stipulation as to entry of order of injunction.
415	6	1916	Ord. order of Dec. 8, '15, vacated, etc.
"	31	"	Ord. cause heard. U. S. Exhibit 1 to 7, inclusive, introduced; cause argued & submitted. Filed U. S. Exhibits 1, 2, 3, 4, 5, 6, & 7.
Mar.	27	"	Ord. decree for permanent injunction entered. Filed & entered decree for permanent injunction (Eq. Journal 2, p. 351). Made & filed enrolled papers. Dockets.
"	28	"	Filed precept. Issued writ of injunction. Made 8 certified copies of writ of injunction.
"	30	"	Ord. operation of writ of injunction stayed 10 days. Filed writ of injunction.
"	31	"	Filed mem. of costs.
Apr.	6	"	Ord. petition for appeal allowed, etc. Filed, nunc pro tunc, August 17, 1915, Application for modification of fourth section order No. 124. Filed order denying motions to strike out, &c. Entered order (Eq. J. 2, p. —). Filed & entered order that answer of I. C. C. be accepted as answer of def'ts. rail carriers. (Eq. J. 2, p. —) Filed petition for appeal. Filed assignment of errors. Filed & entered order allowing appeal. (Eq. J. 2, p. —) Filed citation. Filed precept for record. Filed plff's objections to precept.
"	7	"	Filed & entered order for transmission of certain original exhibits to Supreme Court of the United States (O. B. 3, p. —).

416 At a stated term—to wit, the July term A. D. 1915—of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the court room in the city and county of San Francisco, on Wednesday, the 14th day of July, in the year of our Lord one thousand inne hundred and fifteen. Present: The Honorable William W. Morrow, circuit judge, designated to hold and holding this court; the Honorable William C. Van Fleet, district judge; and the Honor-

able William H. Sawtelle, district judge, for the district of Arizona, designated to hold and holding this court.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento et al.

vs.

UNITED STATES OF AMERICA ET AL.

No. 191,
in equity.

Hearing on petitioners' application for a stay of an order of the Interstate Commerce Commission came on to be heard, John E. Alexander, Esq., appearing on behalf of petitioners; John W. Preston U. S. district attorney, and Blackburn Esterline, special assistant to the Attorney General, appearing on behalf of the United States; C. W. Durbrow, Esq., appearing on behalf of the Southern Pacific Co., and the Atchison, Topeka & Santa Fe Ry. Co.; A. P. Matthew, Esq., appearing on behalf of the Denver & Rio Grande R. R. Co. and the Western Pacific R. R. Co. It was ordered that the proceedings be reported.

417 The United States presented and filed its special appearance for the specific and only purpose of challenging the jurisdiction of the court. After arguments, the court ordered that the notice of this hearing was not sufficient.

418 At a stated term—to wit, the July term A. D. 1915—of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the court room in the city and county of San Francisco, on Monday, the 16th day of August, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable Maurice T. Dooling, district judge.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento et al.

vs.

UNITED STATES OF AMERICA ET AL.

Equity 191.

Ordered that Honorable William W. Morrow, circuit judge, and Honorable Benjamin F. Bledsoe, district judge, be called to the assistance of the judge of this court to hear and determine the *the* application for an interlocutory injunction herein.

419 At a stated term—to wit, the July term, A. D. 1915—of the District Court of the United States of America in and for the Northern District of California, Second Division, held at the court room in the city and county of San Francisco, on Tuesday, the 17th day of August, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable William W. Morrow, circuit judge, designated to hold and holding this court; the Honorable Maurice T. Dooling, district judge; and the Honorable Benjamin F.

Bledsoe, district judge for the Southern District of California, designated to hold and holding this court.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSO-
ciation of Sacramento et als.

vs.

UNITED STATES OF AMERICA ET AL.

No. 191, Equity.

Order continuing petitioners' application and defendants' motions, etc.

Petitioners' application for a preliminary injunction and defendants' motions to dismiss the petition came on to be heard; John E. Alexander, Esq., appearing on behalf of petitioners, and Joseph W. Folk, Esq., for the Interstate Commerce Commission; Blackburn Esterline, Esq., and John W. Preston, U. S. attorney, for the Government; A. P. Matthew, E. W. Camp, and C. W. Durbrow, Esqrs., for each and all of the defendant railroad companies. After arguments by counsel the further hearing was ordered continued to 10.15 a. m. to-morrow.

420 At a stated term—to wit, the July term, A. D. 1915—of the District Court of the United States of America in and for the Northern District of California, Second Division, held at the court room in the city and county of San Francisco, on Wednesday, the 18th day of August, in the year of our Lord one thousand nine hundred and fifteen. Present: The honorable William W. Morrow, circuit judge, designated to hold and holding this court; the Honorable Maurice T. Dooling, district judge, and the Honorable Benjamin F. Bledsoe, district judge for the Southern District of California, designated to hold and holding this court.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSO-
ciation of Sacramento et al.

vs.

UNITED STATES OF AMERICA ET AL.

No. 191, Equity.

The parties being present as heretofore, the petitioners' application for an injunction came on for further hearing, and the arguments being concluded, the matters were submitted. Ordered that the arguments be written and three copies furnished to the judges, the cost to be divided among the parties. Defendants to have five days to file points and petitioners five days thereafter to reply.

421 At a stated term—to wit, the November term, A. D. 1915—of the District Court of the United States of America in and for the Northern District of California, Second Division, held at the court room in the city and county of San Francisco, on Wednesday, the 8th day of December, in the year of our Lord one thousand nine hundred and fifteen. Present: The Honorable Maurice T. Dooling, district judge.

MERCHANTS AND MANUFACTURERS TRAFFIC ASSO-
ciation of Sacramento et al.

vs.

UNITED STATES OF AMERICA ET AL.

No. 191, Equity.

Order granting petitioners' application for an injunction pendente lite, etc.

The petitioners' application for an injunction pendente lite heretofore heard before Honorable William W. Morrow, circuit judge, and Honorable Maurice T. Dooling and Honorable Benjamin F. Bledsoe, district judges, being now fully considered, it is ordered that said application be, and the same is hereby, granted, and that an interlocutory injunction issue restraining the respondents from further enforcing the order of the Interstate Commerce Commission, dated April 30, 1915, in so far as it increases westbound transcontinental freight rates on Schedules B and C commodities to Sacramento, Stockton, San Jose, and Santa Clara. Ordered that the opinion by Honorable William W. Morrow, circuit judge, and concurred in by Honorable Maurice T. Dooling, district judge, be filed, and that the dissenting opinion by Honorable Benjamin F. Bledsoe, district judge, be filed.

422 At a stated term—to wit, the November term, A. D. 1915—of the District Court of the United States of America in and for the Northern District of California, Second Division, held at the court room in the city and county of San Francisco, on Thursday, the 6th day of January, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable Maurice T. Dooling, district judge.

MERCHANTS AND MANUFACTURERS' TRAFFIC ASSN.
of Sacramento et al.

vs.

UNITED STATES ET AL.

No. 191, Equity.

Order setting aside and vacating order heretofore entered on December 8, 1915.

Upon motion of F. B. Austin, Esq., on behalf of defendants, it is ordered that the order heretofore entered on December 8, 1915, be, and the same is hereby, vacated and set aside.

423 At a stated term—to wit, the November term A. D. 1915—of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the court room in the city and county of San Francisco, on Monday, the 31st day of January, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable William W. Morrow,

circuit judge, designated to hold and holding this court; the Honorable Maurice T. Dooling, district judge, and the Honorable Benjamin F. Bledsoe, district judge, for the Southern District of California, designated to hold and holding this court.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento et al.,

vs.

UNITED STATES OF AMERICA ET AL.

No. 191,
Equity.

Order submitting cause for consideration and decision, etc.

This suit came on this day for final hearing, John E. Alexander, Esq., appearing as attorney for the plaintiffs; Blackburn Esterline, Esq., appearing as attorney for the United States; Joseph W. Folk, Esq., appearing as attorney for the Interstate Commerce Commission; and C. W. Durbrow, Esq., appearing as attorney for the Southern Pacific Co. et al. Thereupon U. S. Exhibits Nos. 1 to 7, inclusive, were introduced in evidence, and the cause, after arguments by counsel for the respective parties, was submitted to the court for consideration and decision. It was ordered that the oral arguments of counsel be transcribed and filed herein.

424 At a stated term—to wit, the March term A. D. 1916—of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the court room in the city and county of San Francisco on Thursday, the 30th day of March, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable William W. Morrow, circuit judge, designated to hold and holding this court, and the Honorable Maurice T. Dooling, district judge.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento et al.,

vs.

UNITED STATES OF AMERICA ET AL.

No. 191,
Equity.

Order staying the operation of the writ of injunction, etc.

Upon motion on behalf of the respondents, it is ordered that the operation of the writ of injunction, issued herein on March 28, 1916, be and the same is hereby stayed for a period of ten days from this date.

425 In the United States District Court for the Northern District of California, Second Division.

MERCHANTS AND MANUFACTURERS TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

v.

UNITED STATES OF AMERICA, INTERSTATE Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company, respondents.

In Equity, No. 191.

In equity. Application for an injunction to restrain the Interstate Commerce Commission from enforcing certain orders of the commission under section 1 of the act of October 22, 1913, entitled "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen, and for other purposes." (38 Stat., part 1, pages 208, 220.)

John E. Alexander, solicitor for petitioners, Blackburn 426 Esterline, special assistant to the Attorney General; John W. Preston, United States Attorney; Joseph W. Folk, Allan P. Matthew, E. W. Camp, and C. W. Durbrow, solicitors for respondents.

Before Morrow, circuit judge, and Dooling and Bledsoe, district judges.

MORROW, *Circuit Judge*.

The petitioners are applying to this court, upon the bill of complaint and affidavits, for an interlocutory injunction to restrain in part an order of the Interstate Commerce Commission dated April 30, 1915, and the tariff filed by certain of the transcontinental rail carriers pursuant to said order, Supplement 16 to Transcontinental Freight Bureau Westbound Tariff No. 1-N, in so far as the said order charges for westbound transcontinental commodities destined to Sacramento, Stockton, San Jose, and Santa Clara any greater amount than is charged for the transportation of like commodities to San Francisco or Oakland.

A preliminary motion to dismiss the bill has been made by the United States on grounds that appear to be sufficiently stated in the objections that the petitioners do not bring the suit as common carriers or as shippers; that they have no such interest in the orders of the Interstate Commerce Commission sought to be annulled and enjoined as to enable them to maintain the suit; that it does not ap-

pear that they will sustain irreparable injury or any injury by reason of any orders of the commission made subject of complaint; and that the petitioners have no standing in a court of equity to maintain the suit.

427 Three of the petitioners are traffic associations formed for the purpose of representing jobbers and merchants located at Sacramento, Stockton, and San Jose in traffic matters in which all the parties represented are interested. The remaining petitioner, Santa Clara, is a municipal corporation representing the interests of the citizens of that municipality.

All of the petitioners are authorized by section 13 of the act to regulate commerce (act of February 4, 1887, 24 Stat., 379) to apply to the Interstate Commerce Commission by petition for relief in certain matters; that is to say, they may become parties to certain proceedings before the Interstate Commerce Commission, thus recognizing their right to represent the interest of others before that body. And it is further provided in the section that "no complaint shall at any time be dismissed because of the absence of direct damage to the complainant."

It is further provided in section 2 of the act to further regulate commerce with foreign nations and among the States (act of February 19, 1903, 32 Stat., part 1, page 847) "that in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and

428 against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers."

The purpose of these statutes is plainly to meet a situation and bring in all parties interested in the controversy, to the end that the entire question involved may be settled and determined in the one proceeding. Such being the purpose, we see no objection to classes of persons similarly situated being represented by an association or other organization and coming into the controversy under the common name. This, we think, brings this case within the well-known rule that bills may be filed in the name of an unincorporated association and by parties on behalf of others similarly situated.

In Foster's Federal Practice (5th edition), section 114, the rule is stated as follows:

"Class suits: When a number of persons have a common interest in a thing which is the subject of a *common interest in a thing which is the subject of* litigation, and, in some instances, when a number of persons have a common interest in a question which is before the court for decision one or more may sue or be sued in behalf of the rest. Judge Story divides the first of these divisions into two: '(1)

When the question is one of a common and general interest, and one or more sue or defend for the benefit of the whole; and (2) when the parties form a voluntary association for public or private purposes, and those who sue or defend may fairly be presumed to represent the rights and interests of the whole.' But there seems to be no reason for treating the two classes separately. They are
 429 called 'class suits,' 'creditors' suits,' or 'stockholders' suits,' as the case may be."

Moreover, the equity rules seem to contemplate such a suit for the common benefit of all where the parties are numerous and have a common or general interest. Equity rule No. 37 provides, "All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs, and persons having a united interest must be joined on the same side as plaintiffs or defendants." Equity rule No. 38 provides that "when the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole."

We think, under these rules, this action may be maintained by the petitioners. The motion to dismiss is therefore denied.

After the passage of the act of February 4, 1887, to regulate commerce (24 Stat., 379), it became unlawful, under section 4 of the act, for a carrier to charge or receive any greater compensation in the aggregate for the transportation of passengers or like kind of property for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance. But there was a qualification provided in the statute that the transportation for the shorter and longer distances must be under substantially similar circumstances and conditions. There was a further provision that upon application to the Interstate Commerce Commission a carrier might in special cases
 430 after investigation by the commission be authorized to charge less for the longer than for the shorter distance.

The controversy in the present case has its origin in proceedings arising out of an application made to the Interstate Commerce Commission by the Railroad Commission of Nevada. Prior to that application, all points in Nevada (which points are designated as intermountain points) had been charged much higher rates on both classes of westbound freight, viz: freight designated as class freight and freight designated as commodities, than had been charged to Pacific coast terminals. Sacramento, Stockton, San Jose, and Santa Clara, as well as other points in California, had long prior to such time been designated as Pacific coast terminals and were such at the time of the application to the Interstate Commerce Commission by the Railroad Commission of Nevada. The prayer of the Nevada application was: "Nevada asks that she be given rates as low as those given to Sacramento."

Sacramento was the nearest Pacific coast terminal to Nevada, and the former system of rate making for points in Nevada was to

charge the full rate to the nearest Pacific coast terminal, and then charge in addition thereto the full local back-haul rate to the point of destination. Thus, Nevada points were charged for a shorter distance the full terminal rate for a longer distance, and, in addition, the local back-haul rate to the point of delivery. The petition was that Nevada might have the full benefit of the long and short haul clause of the fourth section of the commerce act. The petition was not granted in full, but the commission did establish class rates to be charged to certain Nevada points. The rates to points
431 outside of Nevada were not considered. In fixing the class rates, the commission stated that additional data as to commodity rates would be secured before an order would be made relative to such rates.

The findings and conclusions upon the foregoing application, and the order pursuant thereto, were entered of record on June 6, 1910. On June 18, 1910, Congress amended the fourth section of the act to regulate commerce by striking out the clause, "under substantially similar circumstances and conditions." The provision relating to applications to the commission by the carriers for authority to depart from the long-and-short-haul clause of the section was amended slightly so as to read:

"Provided, however, that upon application to the Interstate Commerce Commission such common carrier may in special cases after investigation be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section."

PACIFIC COAST TERMINALS.

Prior to this amendment the construction of the fourth section had been that the rail carriers had the primary right to determine as to what constituted "under substantially similar circumstances and conditions," and when a departure could be made from the long-and-short-haul requirements of section 4 because of a dissimilarity of circumstances and conditions. (Intermountain Rate Cases, 234 U. S.,
476, 482.)

432 After the amendment, various transcontinental lines made applications to the Interstate Commerce Commission for authority to continue the then practice of making commodity rates to the Pacific coast lower than to intermediate, or Nevada, points. The "Pacific coast" here referred to was what was then known as "Pacific coast terminals," and included, as before stated, Sacramento, Stockton, San Jose, and Santa Clara and other points in California. The applications of the carriers did not propose to disturb the terminal or short-haul rates to these points. In other words, there was no application on the part of the carriers to suspend the long-and-short-haul clause of section 4 with respect to these terminal points.

(See Fourth Section Applications Nos. 205, 342, 343, 344, 349, 350, and 352, Commodity Rates to the Pacific Coast Terminals and Intermediate Points, decided January 29, 1915, 32 I. C. C., 611.)

BLANKET RATES FROM THE MISSOURI RIVER TO THE ATLANTIC OCEAN.

The Interstate Commerce Commission, in the report just cited, referring to the history of these applications, say:

"Fourth section order No. 124 recognized the existence of a wide blanket of rates as to points of origin extending from the Missouri River to the Atlantic Ocean on traffic to the Pacific coast, while it did not provide for such blanketing of rates to points in the intermediate territory."

Then, after explaining the effect of this blanketing of rates from the Missouri River to the Atlantic Ocean, the commission say:

433 "Upon the whole record we are of the opinion that these carriers are justified in the maintenance of a blanket as to points of origin on rates to the Pacific coast, and that this practice carries with it no necessity or obligation of blanketing the same territory of origin in establishing rates to intermediate points."

The "intermediate points" referred to in this report are the intermountain or Nevada points, but the carriers were to be permitted to maintain blanket rates to Pacific coast terminals.

BACK-HAUL TERRITORY.

The commission thereupon proceed to designate a territory on the Pacific coast as back-haul territory, and say:

"We have heretofore described this territory as lying along the main lines of these railways immediately east of the terminals. For the purpose of this report this will be called the back-haul territory."

The commission then make the suggestion that carriers readjust rates to back-haul points by either adding to the full terminal rates something less than full locals from terminal to destination, or by the publication of basing rates to the terminals, less than the terminal rates, to be used in connection with local rates from the terminals in determining rates to intermediate points.

The commission say:

"The record in this case is not sufficient to afford a basis warranting the commission in prescribing the exact measure of these rates. We shall, therefore, make no order in regard thereto at this time."

434 The commission continue:

"No evidence has been presented in this case to show that it is necessary to apply the coast terminal rates to any points except the ports of call on the Pacific coast at which the Atlantic-Pacific steamship lines deliver freight. We shall authorize these carriers to establish the rates proposed to these ports upon all the articles in the list, excepting those to which exceptions have been noted."

This is the first intimation in these proceedings that the Pacific coast terminals were to be reduced to "the ports of call on the Pacific coast at which the Atlantic-Pacific steamship lines deliver freight." No carrier had made application for such an order, and its consideration by the commission was not had in any special case. It meant the elimination of Sacramento, Stockton, San Jose, and Santa Clara from Pacific coast terminals and their transfer to the newly created back-haul territory; such transfer resulting, as we shall presently see, in authorizing the carrier to charge a greater compensation for a shorter distance than for a longer distance at the point of destination and, in addition, to charge a still greater compensation if the point of origin should be between the Missouri River and the Atlantic Ocean; this increased charge or compensation at the point of origin resulting from the withdrawal of the blanket rates from back haul and intermediate territory and substituting a differential therefor under a classification by zones. We find no application by any carrier for authority to charge more from the blanketed territory between the Missouri River and the Atlantic Ocean to Sacramento, Stockton, San Jose, and Santa Clara than to San Francisco and Oakland.

435 The commission said further in their report:

"We shall expect the carriers within 60 days from date of service hereof to submit to the commission such plan for adjustment of rates to the back-haul points as they may desire. Should the carriers submit no such plan within this time, the commission will undertake such investigation as to these rates as will enable it to enter a proper order with regard thereto."

In response to this invitation of the commission, to transcontinental lines to California terminals proposed for the so-called back-haul territory to deduct from the terminal commodity rates 7 cents per 100 pounds, carloads, and 10 cents per 100 pounds, less than carloads, for basing rates, and to add thereto the full local rate from nearest terminal to destination. This was to apply eastward from the terminal until the point is reached at which the prescribed maximum rate is the same or less; the rate to a back-haul point not to be less than that to the terminal point.

In the report of the Interstate Commerce Commission, dated April 30, 1915 (34 I. C. C., 13), this proposal of the carriers was not approved; but in lieu thereof, carriers were ordered to construct such rates by adding to the terminal rates not more than 75 per cent of the local rates from the nearest terminal to destination, or by adding arbitraries to the terminal rates varying with distance from the ports, such arbitraries to be not more than 75 per cent of the local rates, the aggregate not to exceed the maximum prescribed to intermediate points mentioned in the order.

It was further ordered that in the observance of this order
436 as to rates on Schedule C commodities, the Pacific coast terminals should consist of * * * San Francisco and Oakland, Cal., * * *; Sacramento, Stockton, San Jose, and Santa Clara being omitted from the order as Pacific coast terminals.

We are advised in these proceedings that the proposal of rates for Schedule C commodities as made by the carriers for back-haul territory for such points as Sacramento, Stockton, San Jose, and Santa Clara was the equivalent of terminal rates for San Francisco and Oakland; and such we understand to be the statement contained in the report of the commission. Commenting upon the plan submitted by the carriers, the commission say:

"The plan for constructing rates to back-haul points proposed by the lines leading to the California terminals would create a zone contiguous to the terminals to which terminal rates would apply. The extent of this zone would be limited by the distances to which local rates of 7 cents, carloads, and 10 cents, less than carloads, would reach. It would, however, in substance include all of the points that have heretofore been accorded terminal rates."

In other words, points previously designated as terminal points would continue to have the equivalent of terminal rates. There was, therefore, no application on the part of the carriers, under section 4 of the act to regulate commerce, to be authorized to charge less for a longer (to San Francisco and Oakland) than for a shorter distance (to Sacramento, Stockton, San Jose, and Santa Clara).

With respect to differentials in the prescribed zone rates, the commission say:

437 "In making rates from territories east of the Missouri River the carriers were authorized to add to the rates made from the Missouri River to intermediate points differentials of 25, 40, and 55 cents per 100 pounds from Chicago, Pittsburgh, and New York, respectively."

Here was a further increase of rates for Sacramento, Stockton, San Jose, and Santa Clara if the commodity originated east of the Missouri River, 25 cents per 100 pounds if the commodity were shipped from Chicago, 40 cents per 100 pounds if the commodity were shipped from Pittsburgh, and 55 cents per 100 pounds if the commodity were shipped from New York. No application was ever made by the carriers for the increase arising from such a change from blanket to zone rates east of the Missouri River.

Our attention is called to another provision of this order of April 30, 1915. In the applications made by the carriers commodities were divided into three classes, designated as Schedules A, B, and C, each containing a different class of commodity. The order of January 29, 1915, referred only to Schedule C commodities, the order specifically stating in the first sentence that a hearing had been had "with reference to the justification for the additional relief sought by the carriers respecting the rates on the commodities listed under Schedule C." It appears, however, that the order of April 30, 1915, has the effect of assigning Schedule B commodities to a per cent of increase prescribed in zone rates, as follows: 7 per cent from points in zone 2, 15 per cent from points in zone 3, and 25 per cent from points in zone 4. This feature of the transcontinental tariff was never men-

438 tioned in any application, and there was never a hearing of any kind upon that subject.

The effect of this feature of the order is this: It authorizes the carriers to charge more for the shorter haul to Sacramento, Stockton, San Jose, and Santa Clara than for the longer haul to San Francisco and Oakland on both Schedules B and C commodities without any application having been made by the carriers for such authority.

The order of April 30, 1915, as a whole, increases the transcontinental rates to Sacramento, Stockton, San Jose, and Santa Clara over the previously existing rates for commodities in Schedules B and C in the following particulars: (1) An increase of rates on such commodities by the transfer of the points named from terminals to back-haul territory, and (2) an increase of rates from points of origin east of the Missouri River by taking from such points the blanket rates of the eastern territory.

The discussion of the questions involved in these proceedings has taken a wide range, but we are of the opinion that the only question we have to deal with in this case is the statutory power of the Interstate Commerce Commission. Had the commission, in the absence of an application by the carriers, the statutory power to make the order it did? Can the commission suspend the long-and-short-haul clause of section 4 of the act to regulate commerce without an application being made to it by the carriers for that purpose and a hearing upon that particular application as in a special case? We are of the opinion that this is beyond the statutory power of the commission, and such we understand to be the decision of the Supreme Court in

United States v. Louis. & Nash. R. R., 235 U. S., 314, 322.

439 An interlocutory injunction will therefore issue, restraining the respondents from further enforcing the order of April 30, 1915, in so far as it increases westbound transcontinental freight rates on Schedules B and C commodities to Sacramento, Stockton, San Jose, and Santa Clara.

Endorsed: Filed Dec. 8, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

440 In the United States District Court for the Northern District of California, Second Division.

MERCHANTS AND MANUFACTURERS' TRAFFIC ASSOCIATION
of Sacramento et al., petitioners,

v.

UNITED STATES OF AMERICA ET AL., RESPONDENTS.

Dissenting
opinion.

I am unable to concur with my associates in this case. The decree to be entered pursuant to their conclusions will enjoin the respondents from further enforcing the order of the Interstate Commerce Commission dated April 30th, 1915, "in so far as it increases westbound transcontinental freight rates on Schedule B and C commodities to Sacramento, Stockton, San Jose, and Santa Clara." In all other respects, and with reference to all other communities in

the so-called back-haul territory (hundreds in number, obviously), the order is to stand. If the order lacks validity because in excess of the jurisdiction conferred upon the commission, it should be annulled and its operation stayed in toto.

I can not acquiesce, however, in the conclusion that the order was in excess of the jurisdiction conferred upon the commission. By the majority opinion such invalidity is made to rest upon the single fact that no "application" for the order had been made, and that, under the construction given to section 4 of the act to regulate commerce, as announced in 235 U. S., 314, 322, the making of such "application" is a necessary prerequisite to action on the
441 part of the commission. I do not so construe the section and do not so read the decision.

It is clear that Congress intended that the general rule should be that a common carrier should not charge more for a shorter than for a longer haul over the same route in the same direction. It was seen, however, that occasions would doubtless arise justifying, if not demanding, exceptions to this general rule, and it was therefore provided that "upon application to the Interstate Commerce Commission such common carrier may, in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances."

Now the thing that Congress was insisting upon as a condition precedent to the creating of an exception to the general rule was not the making of an application by the carrier, but the granting of consent by the commission. It was the judgment of the commission, after investigation, that was to warrant the setting aside of the statutory rule, and the provision for the making of an "application" was intended merely as a means of securing such investigation and judgment. The making of an application by the carrier was of the form, perhaps, but not of the substance of the proceeding. It was a mere means to an end, and should not, in my judgment, be confounded with the end itself. The large purpose of the amendment to section 4 was to substitute the judgment of the commission for that of the carrier as to the necessity for a violation of the long and short haul clause of the commerce act. The amendment took
442 "from the carriers the deposit of public power previously lodged in them and vested it in the commission as a primary instead of a reviewing function." (Intermountain Cases, 234 U. S., 476.)

If no order of the commission providing for an exception to the general rule respecting the long and short haul clause is valid unless preceded by an "application" therefor, then, in logic, the application must have been for the order as precisely made, and in consequence the commission could make no order respecting relief from the controlling provisions of section 4 save such order as had been specially "applied" for. The net result of this would be to reduce the commission almost to a mere automaton, with no power save to say yes or no. This illy comports with the "primary instead

of a reviewing function" vested in the commission by the amendment, and is, as I read it, in direct contravention of the holding in the Intermountain Cases, *supra*.

Indeed the Supreme Court in those cases, quoting the language of section 4 immediately following the clause just referred to, say that the section as amended gives to the carrier the right to apply for authority to charge less for the longer haul, "and gives the commission authority, from time to time, 'to prescribe the extent to which such designated common carrier may be relieved from the operation of this section.'" The commission could hardly be said to be vested with the right to exercise its authority "from time to time" if such exercise was absolutely dependent, as held in the majority opinion herein, upon the filing of an "application" with it.

Moreover, by section 13 of the act to regulate commerce as amended at the same time section 4 was amended, it is specially provided:

"* * * and the Interstate Commerce Commission shall
443 have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before said commission by any provision of this act, or concerning which *any question* may arise under *any of the provisions of this act*, or relating to the *enforcement of any* of the provisions of this act. And the said commission shall have the same powers and authority to proceed with *any inquiry instituted on its own motion* as though it had been appealed to by complaint or petition under any of the provisions of this act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. (*Italics mine.*)

Language could hardly be more comprehensive. If this section does not give to the commission primary and plenary authority to do the thing complained of in this proceeding, it is difficult for me to conceive of language possessing that efficacy. The suggestion has been made that because the word "application" was not used along with "complaint" and "petition" in the last sentence, that therefore there was no intention to accord to the commission independent authority to conduct an investigation in any of the instances where provision was made for the filing of an application. It is a sufficient answer to this, however, to say that the first sentence quoted contains no such qualifying phrases, and of itself would seem to afford ample authority for the action under review, even if the last sentence containing the reference to "complaint" and "petition" and omitting any reference to "application" be completely disregarded. In addition, "application" and "petition" are synonymous terms; in
444 fact the Century Dictionary defines a "petition" as a "written application" for relief. It were in furtherance of the general remedial spirit of the act to regulate commerce to construe, if such construction be necessary, the word "petition" to include and embrace "application."

Section 15 of the commerce act, as amended at the same time as above indicated, provides:

"That whenever, after full hearing upon a complaint made as provided in section thirteen of this act, *or after full hearing under an order for investigation and hearing made by the commission on its own initiative (either in extension of any pending complaint or without any complaint whatever)*, the commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this act for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this act are *unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this act, the commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall*

445 *cease and desist from such violation to the extent to which the commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.*" [Italics mine.]

This provision is all comprehensive in its language and purpose and to me is in emphatic disaffirmance of the position assumed in the majority opinion. It seems to have been so considered in a proceeding somewhat analogous to this reported in 219 Fed., 988, 991-2.

There is no requirement anywhere that notice of the application referred to in section 4 shall be given to anyone. The hearings had and orders made in the proceeding under consideration could and probably would have taken exactly the same course they did take even if the formal "application" whose absence is now relied on had been made. The absence of any requirement of notice is not, of course, an argument that an application should not have been made, but it is peculiarly persuasive with me to the effect that Congress did not intend that the making of an application for relief should constitute a jurisdictional prerequisite to the granting of relief. If it had, it would have provided for some notice of the application to be given. The absence of any provision for notice, the empowering of the commission to afford relief "from time to time," together with the comprehensive phraseology of sections 13 and 15, supra, lead me to conclude that the hearing, investigation, and order countenanced by the act are to be had "upon application" of the carrier or on the

446 initiative of the commission as the circumstances may demand.

Conceding, however, that the making of an application is a jurisdictional prerequisite to the charging of a higher rate for a

shorter haul, the filing of the tariffs with the commission by the carriers involved, pursuant to the order of April 30th, 1915, could in itself reasonably be construed as such application. (It appears from the record that such tariffs were filed, and being approved by the commission, have been officially promulgated.) Considering the fact that no notice of the application has to be given, it would seem that an application made subsequent and pursuant to a hearing, if approved by the commission, would possess all the efficacy of one made before the hearing. If the carriers had not filed their tariffs pursuant to the order of April 30th, and had themselves objected to that order, a much stronger case than is here would have been presented. This, as I read it, however, was the course followed in the Intermountain Cases under analogous circumstances, and yet there the order of the commission was expressly affirmed.

In the only case cited in the main opinion (235 U. S., 314, 322) the carrier was objecting to a ruling of the commission holding a certain rebilling privilege violative of the act to regulate commerce. In reversing a decision of the Commerce Court overruling the commission, the Supreme Court held that under section 4 as amended no such rebilling privilege was valid until the consent of the commission to that end was obtained. There was no case, as here, of such consent having been given, and in consequence I can not see anything in the decision declarative of the proposition that such
447 consent, if given, would have been inefficacious if it had not been preceded by a formal application.

In the case at bar it stands as indubitably true that a hearing and extended investigation was had by the commission, and that their conclusions embraced in the order complained of were the result of most careful consideration. The evidence upon which the order was based is not before us, but the sworn answer of the commission is to the effect that the order was made upon ample evidence, and on this hearing we must assume such to be the case.

Section 13 of the commerce act affords ample machinery for the commission upon application to it to remedy any injustice done to these complainants. They have made no such application, and in that behalf have never submitted their claims or exhibited the prejudice suffered by them to the commission. They were not parties to the proceedings leading up to the order of April 30th, and were not represented thereat. It may be that as to them the order is full of injustice, but if such be the fact it must be assumed that upon a showing thereof, pursuant to the terms of section 13, complete relief would be afforded them by the commission. Until at least they have made the application and have met with refusal, they are not in a position to ask relief at the hands of this court.

In my opinion the application for temporary injunction should be denied.

BLEDSE, Judge.

Endorsed: Filed Dec. 8, 1915. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

448 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company, respondents.

No. 191,
in Equity.

Decree for permanent injunction.

At a stated term of the above court, sitting under section one of the act of October 22, 1913, entitled "An act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen, and for other purposes" (38 Stat., part 1, pages 208, 220), held in the court room thereof in the post-office building, in the city and county of San Francisco, in the district above named, on the 31st day of January, 1916. Present: Honorable W. W. Morrow, circuit judge; Honorable Maurice T. Dooling, district judge; and Honorable Benjamin F. Bledsoe, district judge.

This cause came on to be heard on the day above mentioned upon petitioners' application for a final decree for injunction and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

1. That the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, in Fourth Section Applications Nos. 205, 342, 343, 344, 350, and 352, insofar as they authorize the above-named rail carriers, respondents herein, to charge for the transportation by rail of west-bound transcontinental freight designated in the application by the rail carriers to the Interstate Commerce Commission as schedule B and schedule C commodities, from points in zones 1, 2, 3, and 4, as defined in said orders and destined to Sacramento, Stockton, San Jose, and Santa Clara, California, any greater amount than is concurrently charged for the like carriage of like freight to San Francisco and Oakland, California, were beyond the statutory power of the Interstate Commerce Commission, and the enforcement thereof should be enjoined; and said orders in the particulars above mentioned are hereby canceled and set aside.

2. That the tariffs filed by the rail carriers, respondents herein, pursuant to said orders above specified, being designated as Supplement 16 to Transcontinental Freight Bureau West-Bound Tariff No.

1-N, I. C. C. No. 996, of R. H. Countiss, and supplements thereto or reissues thereof, insofar as they make or impose a charge for the transportation by rail of westbound transcontinental freight designated in the application by the rail carriers to the Interstate Commerce Commission as schedule B and schedule C commodities, from points in zones 1, 2, 3, and 4, as defined in said orders and destined to Sacramento, Stockton, San Jose, and Santa Clara, California, greater in amount than is concurrently charged for the like carriage of like freight to San Francisco and Oakland, California, are without due authority of law and the enforcement thereof should be enjoined; and the said tariffs, supplements, and reissues above mentioned, in the particulars before stated, are hereby canceled and set aside.

3. That an injunction issue herein, perpetually enjoining the Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company, and each of them, their agents, attorneys, servants, workmen, and employees, from enforcing or acting in accord with or under the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, in fourth section applications Nos. 205, 342, 343, 344, 350, and 352, and from enforcing, charging, or collecting freight charges prescribed in the tariffs filed by the rail carriers, respondents herein, under or pursuant to the above-mentioned orders of the Interstate Commerce Commission, said tariffs being designated as Supplement 16 to Transcontinental Freight Bureau West-Bound Tariff No. 1-N, I. C. C. No. 996 of R. H. Countiss, and supplements thereto and reissues thereof, insofar as said orders, tariffs, supplements, or reissues authorize, make, or impose a charge for the transportation by rail of westbound transcontinental freight designated in the application by the rail carriers to the Interstate Commerce Commission as schedule B and schedule C commodities, from points in zones 1, 2, 3, and 4, as defined in said orders and destined to Sacramento, Stockton, San Jose, and Santa Clara, California, greater in amount than is concurrently charged for the like carriage of like freight to San Francisco and Oakland, California.

4. That the petitioners herein do recover of respondents, Interstate Commerce Commission, and the rail carriers above mentioned, their costs and charges and disbursements in this suit to be taxed.

WM. W. MORROW, *Circuit Judge.*

M. T. DOOLING, *U. S. District Judge.*

SAN FRANCISCO, CALIF., *March 27, 1916.*

Endorsed: Filed and entered March 27, 1916. Walter B. Maling, clerk.

452 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and city of Santa Clara, petitioners,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

In equity,
No. 191.

Petition for appeal.

United States of America; Interstate Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, feeling themselves aggrieved by the final order or decree of the district court, entered March 28, 1916, granting a permanent injunction restraining the respondents from carrying out or enforcing the orders of
453 the Interstate Commerce Commission, entered January 29, 1915, and April 30, 1915, as to Sacramento, Stockton, San Jose, and Santa Clara, and in cancelling and setting aside the said orders, by their respective counsel, pray an appeal to the Supreme Court of the United States from the said final order or decree.

The particulars wherein the said respondents consider said final order or decree erroneous are set forth in the assignment of errors now on file, to which reference is made.

And the respondents further pray that a transcript of the record, proceedings, and papers on which the said final order or decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

JNO. W. PRESTON,

United States Attorney, Northern District of California.

E. MARVIN UNDERWOOD,
Assistant Attorney General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

JOS. W. FOLK,
Solicitor for the Interstate Commerce Commission.

ALLAN P. MATTHEW,
C. W. DURBROW,
E. W. CAMP,

Solicitors for

*Atchison, Topeka & Santa Fe Railway Company;
Chicago, Rock Island & Pacific Railway Company;
Denver & Rio Grande Railroad Company;
Southern Pacific Company;
Union Pacific Railroad Company; and
Western Pacific Railroad Company.*

Allowed:

_____,
Circuit Judge.

_____,
District Judge.

_____,
District Judge.

Endorsed: Filed Apr. 6, 1916. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

454 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC
Association of Sacramento, Traffic Bureau of
San Jose Chamber of Commerce, Stockton
Traffic Bureau, and City of Santa Clara, peti-
tioners,

v.

UNITED STATES OF AMERICA; INTERSTATE COM-
merce Commission; Atchison, Topeka &
Santa Fe Railway Company; Chicago, Rock
Island & Pacific Railway Company; Denver
& Rio Grande Railroad Company; Southern
Pacific Company; Union Pacific Railroad
Company; and Western Pacific Railroad
Company, respondents.

In Equity, No. 191.

Assignment of Errors.

Come now United States of America; Interstate Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, by their respective counsel, and in connection with their petition for appeal, file the following assignment of errors on which they will rely on said

appeal to the Supreme Court of the United States from the final order or decree of the District Court, entered March 28, 1916, in the above-entitled cause:

455 The district court erred—

I.

In finding and deciding that, under the act to regulate commerce and the general practice in courts of equity, the petitioners had power and authority to maintain the petition as amended, and that the district court had jurisdiction to entertain the same, and in not dismissing the said petition as amended for lack of power and authority on the part of the petitioners to maintain the same, and for lack of jurisdiction on the part of the district court to entertain the same.

II.

In cancelling and setting aside the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, and in granting the permanent injunction restraining the respondents from carrying out or enforcing the same; for that the petition of the petitioners as amended (a) does not set forth any cause of action and is insufficient to warrant the granting of the permanent injunction, or to form the basis of any relief from the said orders; (b) nor have the petitioners shown that there is any equity in the said petition as amended upon which to grant the permanent injunction or to form the basis for any relief from the said orders; (c) nor have the petitioners shown that in making its said orders the Interstate Commerce Commission acted beyond or without its jurisdiction or exceeded any power or authority conferred upon it by the act to regulate commerce; (d) nor have the petitioners shown that in making its said orders the Interstate Commerce Commission vio-
456 lated any right of the said petitioners protected by the Constitution of the United States or any other right of the said petitioners over which the court may exercise jurisdiction.

III.

In finding and deciding that "The controversy in the present case has its origin in proceedings arising out of an application made to the Interstate Commerce Commission by the Railroad Commission of Nevada."

IV.

In finding and deciding that the applications on file with the Interstate Commerce Commission and the proceedings had thereunder were not sufficient to give the said commission jurisdiction to make the orders which it entered.

V.

In failing to find and decide that the applications on file with the Interstate Commerce Commission and the proceedings had thereunder were sufficient to give the said commission jurisdiction to make the orders which it entered.

VI.

In finding and deciding as follows:

"In the applications made by the carriers, commodities were divided into three classes designated as schedules A, B, and C, each containing a different class of commodity. The order of January 29, 1915, referred only to schedule C commodities, the order specifically stating in the first sentence that a hearing had been had 'with reference to the justification for the additional relief sought by the carriers respecting the rates on the commodities listed under schedule C.' It appears, however, that the order of April 30, 1915, has the effect of assigning schedule B commodities to a per cent of increase prescribed in zone rates, as follows: 7 per cent from points in zone 2, 15 per cent from points in zone 3, and 25 per cent from points in zone 4. This feature of the trans-continental tariff was never mentioned in any application and there was never a hearing of any kind upon that subject.

"The effect of this feature of the order is this: It authorizes the carriers to charge more for the shorter haul to Sacramento, Stockton, San Jose, and Santa Clara than for the longer haul to San Francisco and Oakland on both schedules B and C commodities, without any application having been made by the carriers for such authority."

VII.

In finding and deciding as follows:

"Had the commission, in the absence of an application by the carriers, the statutory power to make the order it did? Can the commission suspend the long and short haul clause of section 4 of the act to regulate commerce without an application being made to it by the carriers for that purpose and a hearing upon that particular application as in a special case? We are of the opinion that this is beyond the statutory power of the commission; and such we understand to be the decision of the Supreme Court in *United States v. Louis. & Nash. R. R.*, 235 U. S. 314, 322."

VIII.

In finding and deciding as follows:

"There was a further increase of rates for Sacramento, Stockton, San Jose, and Santa Clara, if the commodity originated east of the Missouri River; 25 cents per 100 pounds if the commodity were

shipped from Chicago, 40 cents per 100 pounds if the commodity were shipped from Pittsburgh, and 55 cents per 100 pounds if the commodity were shipped from New York. No application was ever made by the carriers for the increase arising from such a change from blanket to zone rates east of the Missouri River."

IX.

In finding and deciding as follows:

"The order of April 30, 1915, as a whole, increases the transcontinental rates to Sacramento, Stockton, San Jose, and Santa Clara over the previously existing rates for commodities in schedules B and C, in the following particulars: (1) An increase of rates on such commodities by the transfer of the points named from terminals to back-haul territory; and (2) an increase of rates from points of origin east of the Missouri River by taking from such points the blanket rates of the eastern territory."

X.

In finding and deciding as follows:

"After the amendment, various transcontinental lines made applications to the Interstate Commerce Commission for authority to continue the then practice of making commodity rates to the Pacific coast lower than to intermediate, or Nevada, points. The 'Pacific coast' here referred to was what was then known as 'Pacific coast terminals,' and included, as before stated, Sacramento, Stockton, San Jose, and Santa Clara, and other points in California. The applications of the carriers did not propose to disturb the terminal or short-haul rates to these points. In other words, there was no application on the part of the carriers to suspend the long-and-short-haul clause of section 4 with respect to these terminal points."

XI.

In ordering, adjudging, and decreeing that the said orders of the Interstate Commerce Commission "in so far as they authorize the above-named rail carriers, respondents herein, to charge for the transportation by rail of westbound transcontinental freight designated in the application by the rail carriers to the Interstate Commerce Commission as schedule B and schedule C commodities from points in zones 1, 2, 3, and 4, as defined in said orders, and destined to Sacramento, Stockton, San Jose, and Santa Clara, California, any greater amount than is concurrently charged for the like carriage of like freight to San Francisco and Oakland, California, were beyond the statutory power of the Interstate Commerce Commission, and the enforcement thereof should be enjoined, and said orders in the particulars above mentioned are hereby cancelled and set aside."

XII.

In ordering, adjudging, and decreeing that "the tariffs filed by the rail carriers, respondents herein, pursuant to said orders above specified, being designated as Supplement 16 to Transcontinental Freight Bureau, West Bound Tariff, No. I-N, I. C. C. Number 996 of R. H. Countiss, and supplements thereto or reissues thereof, in so far as they make or impose a charge for the transportation by rail of westbound transcontinental freight designated in the application by the rail carriers to the Interstate Commerce Commission as schedule B and schedule C commodities from points in zones 1, 2, 3, and 4, as defined in said orders, and destined to Sacramento, Stockton, San Jose, and Santa Clara, California, greater in amount than is concurrently charged for the like carriage of like freight to San Francisco and Oakland, California, are without due authority of law, and the enforcement thereof should be enjoined, and the said tariff supplements and reissues above mentioned in the particulars before stated are hereby cancelled and set aside."

XIII.

In ordering, adjudging, and decreeing that an injunction issue perpetually enjoining the Interstate Commerce Commission and the respondent carriers, and each of them, their agents, attorneys, servants, workmen, and employees, from enforcing or acting in accordance with or under the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, and from enforcing, charging, or collecting freight charges prescribed in the tariffs filed by the respondent carriers under or pursuant to the said orders, in so far as the same "make or impose a charge for the transportation by rail of westbound transcontinental freight designated in the application by the rail carriers to the Interstate Commerce Commission as schedule B and schedule C commodities from points in zones 1, 2, 3, and 4, as defined in said orders, and destined to Sacramento, Stockton, San Jose, and Santa Clara, California, greater in amount than is concurrently charged for the like carriage of like freight to San Francisco and Oakland, California."

XIV.

In ordering, adjudging, and decreeing that "the petitioners herein do recover of respondents, Interstate Commerce Commission, and the rail carriers above mentioned, their costs and charges and disbursements in this suit to be taxed."

XV.

In entering, on March 28, 1916, the following decree:
1. That the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, in the Fourth Section Appli-

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cations Numbers 205, 342, 343, 344, 350, and 352, insofar as they authorize the above-named rail carriers, respondents herein, to charge for the transportation by rail of westbound transcontinental freight designated in the application by the rail carriers to the Interstate Commerce Commission as schedule B and schedule C commodities from points in zones 1, 2, 3, and 4, as defined in said orders and 461 destined to Sacramento, Stockton, San Jose, and Santa Clara, California, any greater amount than is concurrently charged

for the like carriage of like freight to San Francisco and Oakland, California, were beyond the statutory power of the Interstate Commerce Commission, and the enforcement thereof should be enjoined and said orders in the particulars above mentioned are hereby cancelled and set aside.

2. That the tariffs filed by the rail carriers, respondents herein, pursuant to said orders above specified, being designated as supplement 16 to Transcontinental Freight Bureau Westbound Tariff, Number 1-N, I. C. C. Number 996, of R. H. Countiss, and supplements thereto or reissues thereof, insofar as they make or impose a charge for the transportation by rail of westbound transcontinental freight designated in the application by the rail carriers to the Interstate Commerce Commission as schedule B and schedule C commodities from points in zones 1, 2, 3, and 4, as defined in said orders and destined to Sacramento, Stockton, San Jose, and Santa Clara, California, greater in amount than is concurrently charged for the like carriage of like freight to San Francisco and Oakland, California, are without due authority of law, and the enforcement thereof should be enjoined, and the said tariffs, supplements, and reissues above mentioned in the particulars before stated are hereby cancelled and set aside.

3. That an injunction issue herein perpetually enjoining the Interstate Commerce Commission; Atchison, Topeka and Santa Fe Ry. Co.; Chicago, Rock Island and Pacific Railway Company; Denver and Rio Grande Railroad Co.; Southern Pacific Company; Union Pacific Railroad Co.; and Western Pacific Railroad Co., and each of them, their agents, attorneys, servants, workmen, and employes, 462 from enforcing or acting in accordance with or under the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, in Fourth Section Applications Nos. 205, 342, 343, 344, 350, and 352, and from enforcing, charging, or collecting freight charges prescribed in the tariffs filed by the rail carriers, respondents herein, under or pursuant to the above-mentioned orders of the Interstate Commerce Commission, said tariffs being designated as supplement 16 to Transcontinental Freight Bureau, Westbound Tariff No. 1-N, I. C. C. No. 996, of R. H. Countiss, and supplements thereto and reissues thereof, insofar as said orders, tariffs, supplements, or reissues authorize, make, or impose a charge for the transportation by rail of westbound transcontinental freight designated in the application by the rail carriers to the Interstate Commerce

Commission as schedule B and schedule C commodities from points in zones 1, 2, 3, and 4, as defined in said orders and destined to Sacramento, Stockton, San Jose, and Santa Clara, California, greater in amount than is concurrently charged for the like carriage of like freight to San Francisco and Oakland, California.

4. That the petitioners herein do recover of respondents, Interstate Commerce Commission, and the rail carriers above mentioned their costs and charges and disbursements in this suit to be taxed.

XVI.

In enjoining the operation of the act to regulate commerce and the various acts amendatory thereof and supplementary thereto, particularly section 4 thereof, and in suspending the force and effect of the same, and in usurping the functions of the Interstate Commerce

Commission thereunder, and in substituting the administrative
463 action and order of the court in the place and stead of that of the commission on questions of fact within the exclusive jurisdiction of the commission to hear and determine.

XVII.

In overruling the separate motion of the United States of America to dismiss the petition as amended on the several grounds set forth in the said motion and in not sustaining the said motion.

XVIII.

In not sustaining the separate motion of the Interstate Commerce Commission to dismiss the petition as amended on the several grounds set forth in the said motion.

XIX.

In not sustaining the motions of Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company to dismiss the petition as amended on the grounds set forth in their several motions.

XX.

In not finding and deciding that the petitioners failed to show such an interest in the orders sought to be annulled and en-
464 joined as would entitle them to maintain the suit, and that they failed to show any irreparable injury, or any other injury whatsoever, to them, or to any of them, for or by reason of said

orders, and that they have no standing in a court of equity to maintain the said suit.

XXI.

In not finding and deciding that the reports and orders of the Interstate Commerce Commission were regularly made and entered after full hearings and on evidence adduced on issues made by the proper parties before the commission.

XXII.

In not holding and adjudging that the district court was without jurisdiction to proceed to hear and determine the said cause at the instance of the petitioners and in not dismissing the petition as amended for want of jurisdiction.

XXIII.

In not denying the application of the petitioners for interlocutory and permanent injunction and dismissing the petition as amended for want of equity.

Wherefore respondents, and each of them, pray that the said final order or decree of the district court, entered March 28, 1916, be reversed, annulled, and set aside, and that the petition as amended be dismissed, and for such other and further order as may be appropriate.

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JNO. W. PRESTON,
United States Attorney, Northern District of California.

E. MARVIN UNDERWOOD,
Assistant Attorney General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

JOS. W. FOLK,
Solicitor for Interstate Commerce Commission.

ALLAN P. MATTHEW,
C. W. DUSBROW,
E. W. CAMP,

*Solicitors for Atchison, Topeka & Santa Fe Railway Company;
Chicago, Rock Island & Pacific Railway Company;
Denver & Rio Grande Railroad Company;
Southern Pacific Company;
Union Pacific Railroad Company; and
Western Pacific Railroad Company.*

Endorsed: Filed Apr. 6, 1916. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

466 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC Association of Sacramento et al., petitioners,	} No. 191, in Equity.
<i>vs.</i>	
UNITED STATES OF AMERICA ET AL., RESPONDENTS.	

Good cause appearing therefor—

It is ordered that the motions to dismiss, filed herein, by the above-mentioned respondents be, and the same are hereby, denied, to which respondents duly excepted.

It is further ordered that this order be entered nunc pro tunc as of December 8, 1915.

Done in open court this 6 day of April, 1916.

WM. W. MORROW, *Circuit Judge.*

M. T. DOOLING, *District Judge.*

Endorsed: Filed Apr. 6, 1916. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

467 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC Association of Sacramento et al., petitioners,	} No. 191, in Equity.
<i>vs.</i>	
UNITED STATES OF AMERICA ET AL., RESPONDENTS.	

By consent of all the parties hereto and good cause appearing therefor—

It is ordered that the answer of the Interstate Commerce Commission, on file herein, be, and the same is hereby, accepted and taken as the answer of the respondent rail carriers with the same force and effect as if such answer had been duly served and filed herein by the respondent rail carriers.

It is further ordered that the cause be submitted for final decision upon the petition and amendment to petition, the affidavits filed herein on behalf of said petitioners, and upon the exhibits filed herein at the time of the hearing of the application for a temporary injunction, and upon the exhibits filed herein at this hearing.

It is further ordered that this order be entered nunc pro tunc as of January 31, 1916.

Done in open court this 6th day of April, 1916.

WM. W. MORROW, *Circuit Judge.*

M. T. DOOLING, *District Judge.*

Endorsed: Filed Apr. 6, 1916. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

468 At a stated term—to wit: the March term, A. D. 1916—of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the court room in the city and county of San Francisco, on Thursday, the 6th day of April, in the year of our Lord one thousand nine hundred and sixteen. Present: The honorable William W. Morrow, circuit judge, designated to hold and holding this court, and the honorable Maurice T. Dooling, district judge.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSO-
ciation of Sacramento et al.

vs.

No. 191, Equity.

UNITED STATES OF AMERICA ET AL.

Now comes M. A. Thomas, Esq., assistant United States Attorney, and presented and filed a petition for appeal and assignment of errors: By consent of counsel it was ordered that "Application for modification of Fourth Section Order No. 124, dated Chicago, July 2, 1914," be filed nunc pro tunc August 17, 1915. Defendants' application for leave to file nunc pro tunc August 17, 1915, "Report, Santa Rosa Traffic Association v. Southern Pacific Co. et al., June 4, 1912, 24 I. C. C. 46, and Report, Santa Rosa Traffic Association v. Southern Pacific Co., Jan. 5, 1914," was, after argument, denied, to which ruling of the court defendants duly excepted. Thereupon defendants moved the court for leave to file a supersedeas pending the appeal, and after argument by counsel it was ordered that said motion be, and the same is hereby, denied, to which ruling of the court defendants duly excepted.

469 Good cause appearing therefor—

It is ordered that the motions to dismiss, filed herein by the above-mentioned respondents, be, and the same are hereby, denied, to which respondents duly excepted.

It is further ordered that this order be entered nunc pro tunc as of December 8, 1915.

By consent of all the parties hereto and good cause appearing therefor—it is ordered that the answer of the Interstate Commerce Commission, on file herein, be, and the same is hereby, accepted and taken as the answer of the respondent rail carriers with the same force and effect as if such answer had been duly served and filed herein by the respondent rail carriers.

It is further ordered that the cause be submitted for final decision upon the petition and amendment to petition, the affidavits filed herein on behalf of said petitioners, and upon the exhibits filed herein at the time of the hearing of the application for a temporary injunction, and upon the exhibits filed herein at this hearing.

It is further ordered that this order be entered nunc pro tunc as of January 31, 1916.

It was ordered that the affidavits of Bradley, Semple, and Wall, affidavit of George J. Bradley, affidavit of S. E. Semple, and affidavit of W. D. Wall, filed July 23, 1915, be made a part of the transcript of

record on appeal; to which ruling of the court defendants duly excepted.

Thereupon the following order allowing appeal was signed and filed, to wit:

470 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, petitioners,

v.

UNITED STATES OF AMERICA; INTERSTATE COMMERCE Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company; respondents.

In Equity,
No. 191.

Order allowing appeal.

Be it remembered, that in the above-entitled cause, on this 6th day of April, A. D. 1916, United States of America Interstate Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, by their respective counsel, having made and filed their petition praying an appeal to the Supreme Court of the United States from the final order or decree of the district court entered March 471 28, 1916, and having also made and filed an assignment of errors, and having in all respects conformed to the statutes and rules of court in such case made and provided:

It is ordered and decreed, that the said appeal be, and the same is hereby, allowed as prayed, and made returnable within thirty (30) days from the date hereof; and the clerk is directed to transmit forthwith a properly authenticated transcript of the record, papers, and proceedings on which said order or decree was made and entered to the Supreme Court of the United States.

WM. W. MORROW,

United States Circuit Judge for the Northern District of California, and Presiding Judge of the District Court in the above-entitled cause.

M. T. DOOLING,

*United States District Judge,
Northern District of California.*

*United States District Judge,
Southern District of California.*

Endorsed: Filed Apr. 6, 1916. W. B. Maling, clerk, by J. A. [illegible], deputy clerk.

472 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and city of Santa Clara, petitioners,

v.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

In Equity, No. 191.

Præcipe for Record.

To the clerk:

You will please prepare and certify a transcript of the entire record of the evidence and proceedings in the above-entitled cause, to be filed in the office of the clerk of a Supreme Court of the United States, on the appeal from the final order or decree of the district court, entered March 28, 1916, and include in the said transcript, in the order given below, the following pleadings, proceedings, papers, and orders, on file or of record, to wit:

1. Petition.
- 473 2. Amendment to petition.
3. Original subpoenas to United States, Interstate Commerce Commission, and the carriers, with the return service thereof.
4. Motion to dismiss and answer of the United States to the amended petition.
5. Appearance of Interstate Commerce Commission.
6. Motion to dismiss and answer of Interstate Commerce Commission to the amended petition.
7. Stipulation extending time to carriers to answer.
8. Motion of A., T. & S. F. Ry. Co. and other carriers to dismiss the petition as amended.
9. Motion of C., R. I & P. Ry. Co. to dismiss the petition as amended.
10. Order, July 28, 1915, to show cause.
11. Notice of defendant carriers of hearing of motions to dismiss.
12. Order, August 12, 1915, fixing date and place of hearing of motion to dismiss.
13. Notice, September 17, 1915, of motion.
14. Report Railroad Commission of Nevada v. Southern Pacific Company et al., No. 1665, decided June 6, 1910, 19 I. C. C. R. 238.

15. Fourth Sections Applications Nos 205, 342, 343, 344, 350, and 352. (These applications should be certified as a part of the record, but, owing to size, they may be transmitted in a separate volume attached to the main record.)

16. Fourth Section Order No. 124, Interstate Commerce Commission, July 31, 1911.

474 17. Supplemental fourth section order No. 124, Interstate Commerce Commission, September 28, 1914.

18. Report in applications for relief under the fourth section, Nos. 205, etc., *R. R. Commission of Nevada v. Southern Pacific Co. et al.*, *Maricopa County Commercial Club v. S. F. P. & P. Ry. Co. et al.*, decided June 22, 1911, 21 I. C. C. R. 329.

19. Report in applications for relief under the fourth section, Nos. 205, etc., *City of Spokane et al. v. N. P. Ry. Co. et al.*, and *Commercial Club, etc., v. A., T. & S. F. Ry. Co. et al.*, decided June 22, 1911, 21 I. C. C. R. 400.

20. Report in the matter of the application for Southern Pacific Co. for relief under the provisions of the fourth section with respect to traffic moving between Portland, San Francisco Bay, and other points, decided February 5, 1912, 22 I. C. C. R. 366.

21. Supplemental report, *City of Spokane et al. v. N. P. Ry. Co. et al.*, decided May 14, 1912, 23 I. C. C. R. 454.

22. Report in the matter of the application of Southern Pacific Co. for relief under the provisions of the fourth section with respect to traffic moving between Portland, San Francisco, and other San Francisco Bay points, decided June 6, 1912, 24 I. C. C. R. 34.

23. Report *Santa Rosa Traffic Association v. Southern Pacific Co. et al.*, decided June 4, 1912, 24 I. C. C. R. 46.

24. Report *Santa Rosa Traffic Association v. Southern Pacific Co. et al.*, decided January 5, 1914, 29 I. C. C. R. 65.

25. Application for modification of fourth section order No. 124, applications Nos. 205, etc., date, Chicago, July 9, 1914.

26. Report, fourth section applications Nos. 349, etc., decided July 21, 1914, 31 I. C. C. R. 511.

27. Report transcontinental commodity rates to San Jose, Santa Clara, and Marysville, California, etc., decided December 29, 1914, 32 I. C. C. R. 449.

28. Supplemental report and order, fourth section applications Nos. 205, etc., January 29, 1915, 32 I. C. C. R. 611.

29. Report, fourth section application No. 9813, rates on asphaltum, etc., decided March 30, 1915, 33 I. C. C. R. 480.

30. Second supplemental report and order, fourth section applications Nos. 205, etc., decided April 30, 1915, 34 I. C. C. R. 13.

31. All orders, journal entries, and other memoranda relating to the record and proceedings in said cause.

32. Opinion of the court, Circuit Judge Morrow and District Judge Dooling concurring and District Judge Bledsoe dissenting.

33. Final decree, March 28, 1916.

34. Petition for appeal, assignment of errors, order allowing appeal, præcipe for record, and all orders and other memoranda relating to application for stay of decree pending appeal.

JNO. W. PRESTON,
United States Attorney, Northern District of California.

E. MARVIN UNDERWOOD,
Assistant Attorney General.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.

JOS. W. FOLK,
Solicitor for Interstate Commerce Commission.

ALLAN P. MATTHEW,
C. W. DURBROW,
E. W. CAMP,

Solicitors for Atchison, Topeka & Santa Fe Ry. Co.; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company.

476 Endorsed: Filed Apr. 6, 1916. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

477 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and city of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

No. 191, in Equity.

Notice of filing objections to præcipe for record.

To respondents above named and to Messrs. Joseph W. Folk, Blackburn Esterline, John W. Preston, E. W. Camp, Allen P. Matthews, and C. W. Durbrow, their solicitors:

Please take notice that petitioners above named have filed in the office of the clerk of the United States District Court, above men-

tioned, their objections to the præcipe for record on appeal filed therein on behalf of respondents, a copy of which objections are attached hereto.

JNO. E. ALEXANDER,
Solicitor for Petitioners.

Service of the within objections to præcipe for record is admitted this 6th day of April, 1916.

JNO. W. PRESTON,
United States Attorney.

478 In the United States District Court, Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and city of Santa Clara, petitioners,

vs.

UNITED STATES OF AMERICA; INTERSTATE Commerce Commission; Atchison, Topeka & Santa Fe Railway Company; Chicago, Rock Island & Pacific Railway Company; Denver & Rio Grande Railroad Company; Southern Pacific Company; Union Pacific Railroad Company; and Western Pacific Railroad Company, respondents.

No. 191, in Equity.

Objections to præcipe for record.

To the Clerk:

Referring to the præcipe for record filed herein on behalf of respondents or appellees, petitioners herein make the following objections:

I.

The following-mentioned documents, hereafter referred to by the number set opposite thereto in the præcipe for record filed by respondents or appellees herein, are immaterial and unnecessary as a part of the record on appeal in the above cause, said items being as follows:

No. 17. Immaterial.

No. 19. Refers to rates to Spokane and northwest. Immaterial.

No. 20. Refers to special rates between San Francisco and Portland under application No. 1243. Does not refer to applications involved, and is immaterial.

- No. 21. Refers to rates to Spokane and northwest. Immaterial.
- 479 No. 22. Refers only to rates between San Francisco and Portland under application No. 1243. No reference to applications involved herein and is immaterial.
- No. 26. Refers to rates on sugar from territory west of the Rocky Mountains to points eastward under applications not involved in this controversy. Immaterial and no bearing on the case.
- No. 27. No bearing on the case and only part of said matter to be included should be order of the Interstate Commerce Commission which follows said report in said matter and of the same date.
- No. 29. Refers to eastbound rates on asphaltum under application No. 9813. Is not involved in the applications in controversy herein and is immaterial.
- No. 15. Refers to Fourth Section Applications Nos. 205, 342, 343, 344, 350, and 352. A small portion only of each of said exhibits is material, such portion being the application and a summary of the tariff showing that such application refers only to an increase in rates to Nevada points over those charged to California terminals, Sacramento, Stockton, San Jose, and Santa Clara each being one of said terminals.
- No. 31. That portion thereof being the journal entry of July 14, 1915, which is immaterial.

II.

To the record on appeal in the above cause the following papers should be added:

- (a) Affidavit of Bradley, Semple, and Wall, filed July 23, 1915, being marked Exhibit 10.
- (b) Affidavit of George J. Bradley, filed July 23, 1915, being marked Exhibit 11.
- (c) Affidavit of S. E. Semple, filed July 23, 1915, being marked Exhibit 12.
- (d) Affidavit of W. D. Wall, filed July 23, 1915, being 480 marked Exhibit 13.
- (e) Supplement 16 to I. C. C. No. 996 and explanatory note file, showing that the rates to the four complaining cities were increased as to schedule B and schedule C commodities. Only that portion of the exhibit showing this fact is material, and that portion only should be included.

Add the two nunc pro tunc orders given this Apr. 6, 1916.

JNO. E. ALEXANDER,
Solicitor for Petitioners.

Endorsed: Filed Apr. 6, 1916. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

481 In the District Court of the United States, in and for the Northern District of California, Second Division.

MERCHANTS' AND MANUFACTURERS' TRAFFIC ASSOCIATION OF SACRAMENTO ET AL.

vs.

UNITED STATES OF AMERICA ET AL.

No. 191, in Equity.

Order.

Fourth Section Applications Nos. 205, 342, 343, 344, 349, 350, and 352, and supplement 16 to West-Bound Tariff No. 1-N, I. C. C. No. 996 of R. H. Countiss, Circular No. 16-J, and supplement No. 1 thereto, showing increase of rates:

Ordered, that the clerk shall, and he is hereby directed to, make a part of the transcript of record and transmit to the Supreme Court of the United States the said fourth section applications, and each of them, in their original form as filed in his office, and the said supplement 16 to West-Bound Tariff No. 1-N, I. C. C. No. 996 of R. H. Countiss, Circular No. 16-J, and supplement No. 1 thereto.

APRIL 7, 1916.

WM. W. MORROW,

Judge U. S. Circuit Court of Appeals.

M. T. DOOLING,

District Judge.

Endorsed: Filed Apr. 7, 1916. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

482 *Certificate of clerk U. S. District Court to transcript of record.*

I, Walter B. Maling, clerk of the district court of the United States, in and for the Northern District of California, do hereby certify the foregoing four hundred eighty-one (481) pages, numbered from 1 to 481, inclusive, to be full, true, and correct copies of the record and proceedings as enumerated in the præcipe of the defendants and the præcipe of the plaintiffs (excepting therefrom original exhibits marked U. S. Exhibits No. 1, No. 2, No. 3, No. 4, No. 5, No. 6, No. 7, and plaintiff's exhibit "Supplement 16 to West-Bound Tariff No. 1-N, I. C. C. No. 906 of R. H. Countiss, Circular No. 16-J, and Supplement No. 1," which, by order of court, are transmitted herewith and made a part hereof), as the same remain on file and of record in the above-entitled cause, and that the same constitute the record on appeal to the Supreme Court of the United States.

I further certify that the cost of preparing and certifying the transcript of record on appeal in this cause amounts to the sum of \$364.80; that said sum will be charged by me in my quarterly account against the United States for the quarter ending June 30, 1916; and that the original citation issued in said cause is hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court, this 8th day of April, A. D. 1916.

[SEAL.]

WALTER B. MALING,
*Clerk of the United States District Court,
Northern District of California.*

483

Citation on appeal.

UNITED STATES OF AMERICA, ss:

The President of the United States to Merchants' and Manufacturers' Traffic Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and City of Santa Clara, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty (30) days from the date hereof, pursuant to an appeal duly allowed and filed in the clerk's office of the United States District Court, Northern District of California, wherein United States of America, Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company are appellants, and you are appellees, to show cause, if any there be, why the final order or decree rendered against said appellants in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable William W. Morrow, United States circuit judge, Northern District of California; the Honorable Maurice T. Dooling, United States district judge, Northern District of California; and the Honorable Benjamin F. Bledsoe, United States district judge, Southern District of California, this 6th day of April, A. D. 1916.

WM. W. MORROW,
United States Circuit Judge.

M. T. DOOLING,
United States District Judge.

_____,
United States District Judge.

484 Receipt and service of a copy of the within citation is hereby admitted this 6th day of April, A. D. 1916.

JNO. E. ALEXANDER,
Solicitor for all Appellees.

485 (Indorsed on back:) No. 191, Eq. U. S. District Court, Ninth Judicial Circuit, Northern District of California. Merchants' and Manufacturers' Traffic Association of Sacramento et al. vs. United States of America et al., defendants. Citation. Filed Apr. 6, 1916. W. B. Maling, clerk, by J. A. Schaertzer, deputy clerk.

UNITED STATES OF AMERICA ET AL., APPELLANTS,
v.
 MERCHANTS' AND MANUFACTURERS' TRAFFIC AS-
 sociation of Sacramento et al., appellees. } No. 452.

Stipulation.

By their respective counsel the parties stipulate that in printing fourth section applications Nos. 205, 342, 343, 344, 349, 350, and 352 (referred to in the præcipe for record as item No. 15) the clerk may omit, owing to the size thereof, the printed tariffs attached thereto. Attached hereto are copies of the said applications (minus the tariffs) as the same may be printed by the clerk. In printed brief any party may refer to the said tariffs or any of them, but in doing so he shall print in full in his brief such parts thereof as he desires the court to consider.

JOHN W. DAVIS,
Solicitor General.

JOS. W. FOLK,
Chief Counsel, Interstate Commerce Commission.

E. W. CAMP,
 C. W. DURBROW,
 ALLAN P. MATTHEW,
Solicitors for the Carriers.

JOHN E. ALEXANDER,
Solicitor for all Appellees.

487 [Interstate Commerce Commission. Received Dec. 13, 1910.
 Division of Mails and Files. Fourth Section application
 No. 205.]

Transcontinental Freight Bureau, office 443 Railway Exchange, cor.
 Jackson Blvd. and Michigan Ave., Chicago. R. H. Countiss,
 agent.

Application No. 1.

DECEMBER 7, 1910.

To the Interstate Commerce Commission, Washington, D. C.

Application for relief from provisions of Fourth Section of
 amended commerce act in connection with the following tariffs:

Railroad reference.	Interstate Commerce Commission tariff.	Of agent—
Tariff No. 1-L and Sup- plements 1, 2, and 3 thereto.	No. 13 and Supplements 1, 2, and 3 thereto.....	C. W. Bullen.
	No. 235 and Supplements 1, 2, and 3 thereto.....	J. F. Tucker.
	No. 929 and Supplements 1, 2, and 3 thereto.....	R. H. Countiss.
Tariff No. 4-H and Sup- plements 1, 2, 3, and 4 thereto.	No. 14 and Supplements 1, 2, 3, and 4 thereto.....	C. W. Bullen.
	No. 236 and Supplements 1, 2, 3, and 4 thereto.....	J. F. Tucker.
	No. 928 and Supplements 1, 2, 3, and 4 thereto.....	R. H. Countiss.
Circular No. 16-F and Supplement 4 there- to.	No. 9 and Supplement 4 thereto.....	C. W. Bullen.
	No. 168 and Supplement 4 thereto.....	J. F. Tucker.
	No. 915 and Supplement 4 thereto.....	R. H. Countiss.

In the name and on behalf of each of the carriers parties to the above-named tariffs, the undersigned, acting as agents and attorneys or under authority of concurrences on file with the commission from each of the said carriers, respectfully petition the Interstate Commerce Commission for authority to continue all rates shown in the above-named tariffs from eastern shipping points designated to the Pacific coast terminal points and other points designated, lower than rates concurrently in effect from intermediate points, and to intermediate points in Canada and in the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Washington, and points east thereof.

This application is based upon the desire of the interested carriers to continue the present method of making rates lower at the more distant points than at the intermediate points; such lower rates being necessary by reason of—

Competition of various water carriers and of carriers partly by water and partly by rail operating from Atlantic seaboard ports to Pacific coast ports; competition of various water carriers operating from foreign countries to Pacific coast ports, and competition of the products of said foreign countries with the products received at the said eastern shipping points; competition of the products of Eastern and Atlantic coast points with the products moving to the Pacific coast from points in the interior; competition of Canadian rail carriers not subject to the interstate commerce act; competition of the products of Canada moving by Canadian carriers with
488 the products of the United States; rates established via the shorter or more direct routes, but applied also via the longer or more circuitous routs.

Copies of the tariffs and circular in connection with which relief from the 4th section is desired, and to which reference is made in the foregoing, are attached hereto and made a part hereof.

Yours, very truly,

J. F. TUCKER, *Agent*.

Subscribed and sworn to before me this 9th day of December, 1910.

ROLAND A. SPERRY,
Notary Public.

My commission expires Nov. 23, 1913.

C. W. BULLEN, *Agent*.
By JAS. BLOOMINGDALE.

Subscribed and sworn to before me this 12th day of December, 1910.

FREDERICK B. BLACKMAN,
Notary Public.

My commission expires March 30, 1911.

R. H. COUNTISS, *Agent*.

Subscribed and sworn to before me this 9th day of December, 1910.

JOHN N. KERRY,
Notary Public.

My commission expires May 15, 1911.

489 Transcontinental Freight Bureau, office 443 Railway Exchange, cor. Jackson Blvd. and Michigan Ave., Chicago.
R. H. Countiss, agent.

Application No. 13.

DECEMBER 7, 1910.

To the INTERSTATE COMMERCE COMMISSION,
Washington, D. C.:

Application for relief from provisions of fourth section of amended commerce act in connection with proportional rates applying to Vancouver, B. C., under the following tariffs:

Railroad tariff.	Interstate Commerce Commission tariff.	Of agent—
No. S. R. 1001 and Supplement 7 thereto....	No. 914 and Supplement 7 thereto.....	R. H. Countiss.
No. S. R. 1003 and Supplement 4 thereto....	No. 923 and Supplement 4 thereto.....	R. H. Countiss.

In the name and on behalf of each of the carriers parties to the above-named tariffs, the undersigned, acting as agent and attorney or under authority of concurrences on file with the commission from each of the said carriers, respectfully petitions the Interstate Commerce Commission for authority to continue the rates shown in the above-named tariffs from eastern shipping points designated therein to Vancouver, B. C., lower than rates concurrently in effect from and to intermediate points.

The tariffs referred to name proportional rates from shipping points designated on page 1 of each of said tariffs to Vancouver, B. C., applying to Yokohama, Kobe, Nagasaki, Moji, Japan; Shanghai, Hongkong, China; Manila, P. I. (or beyond); and to Sydney, Newcastle, Brisbane (Pinkenba Wharf), Australia; Suva, Fiji Islands; Auckland, New Zealand (or beyond).

This application is based upon the desire of the interested carriers to continue the present method of making rates lower at the more distant points than the rates applying at the intermediate points, these lower proportional rates being necessary in connection with steamer lines operating to Asiatic points, Philippine Islands, Australia, New Zealand, etc., through Vancouver, B. C., by reason of:

The competition of the water carriers operating from and through the Atlantic ports of the United States and Canada, via the Suez Canal, to Asiatic points, Philippine Islands, Australia, New Zealand, etc.; also competition of American products with the products of foreign countries moving via the Suez Canal to Asiatic points, Philippine Islands, Australia, New Zealand, etc.

Copies of the tariffs in connection with which relief from the fourth section is desired, and to which reference is made in the foregoing, are attached hereto and made a part hereof.

Yours, very truly,

R. H. COUNTISS, *Agent*.

Subscribed and sworn to before me this ninth day of December, 1910.

JOHN N. KERRY, *Notary Public*.

My commission expires May 15, 1911.

[Indorsed: Interstate Commerce Commission. Received Dec. 13, 1910. Division of mails and files. Fourth Section Application No. 342.]

491 Transcontinental Freight Bureau, office 443 Railway Exchange, cor. Jackson Blvd. and Michigan Ave., Chicago.
R. H. Countiss, agent.

Application No. 12.

DECEMBER 7, 1910.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.

Application for relief from provisions of fourth section of amended commerce act in connection with proportional rate on earthenware and crockery (carloads) under the following tariff:

Railroad tariff.	Interstate Commerce Commission Tariff.	Of agent—
No. 4-H.....	(No. 14..... No. 226..... No. 928.....)	C. W. Bullen. J. F. Tucker. R. H. Countiss.

In the name and on behalf of each of the carriers parties to the above-named tariff, the undersigned acting as agents and attorneys or under authority of concurrences on file with the commission from each of the said carriers, respectively petition the Interstate Commerce Commission for authority to continue the proportional rate of 85 cents per 100 lbs. from Portland, Me., Boston, Mass., New York, N. Y., Philadelphia, Pa., Baltimore, Md., Newport News, Va., Norfolk, Va., to north Pacific coast terminals (designated on page 16 of tariff), and to British Columbia Pacific coast terminals (designated on page 23 of tariff), shown in item 9, page 130, of the above-named tariff, applying on carload shipments of earthenware and crockery originating in Europe, lower than rates concurrently in effect from intermediate points and to intermediate points in Canada and in the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and points east thereof.

This application is based upon the desire of the interested carriers to continue the present method of making a lower rate at the more

distant points than at the intermediate points, such lower proportional rate being necessary by reason of—

The competition of the direct all-water routes and the water-and-rail routes via the Isthmus, from European ports to Puget Sound and British Columbia ports.

A copy of the tariff in connection with which relief from the fourth section is desired, and to which reference is made in the foregoing, is attached hereto and made a part hereof.

Yours, very truly,

C. W. BULLEN, *Agent*.

By JAS. BLOOMFIELD.

Subscribed and sworn to before me this 12th day of December, 1910.

FREDERICK B. BLACKMAN,
Notary Public.

My commission expires March 30, 1911.

J. F. TUCKER, *Agent*.

Subscribed and sworn to before me this 9th day of December, 1910.

ROLAND A. SPERRY,
Notary Public.

My commission expires Nov. 23, 1913.

R. H. COUNTISS, *Agent*.

Subscribed and sworn to before me this 9th day of December, 1910.

JOHN N. KERRY,
Notary Public.

My commission expires May 15, 1911.

[Endorsed: Interstate Commerce Commission. Received Dec. 13, 1910. Division of Mails and Files, Fourth Section, Application No. 343.]

493 Transcontinental Freight Bureau, office 443 Railway Exchange, cor. Jackson Blvd. and Michigan Ave., Chicago.
R. H. Countiss, agent.

Application No. 11.

DECEMBER 7, 1910.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

Application for relief from provisions of fourth section of amended commerce act in connection with proportional rates from New Orleans, La., Galveston, Texas City, Tex., to California terminals on traffic originating in foreign countries, under the following tariff:

Railroad tariff.	Interstate Commerce Commission tariff.	Of agent—
No. S. R. 1002 and supplement 3 thereto.	No. 917 and supplement 3 thereto.....	R. H. Countiss.

In the name and on behalf of each of the carriers parties to the above-named tariff, the undersigned, acting as agent and attorney or under authority of concurrences on file with the commission from each of the said carriers, respectfully petitions the Interstate Commerce Commission for authority to continue all rates shown in the above-named tariff from (shipside) New Orleans, La., Galveston, Texas City, Tex., to California terminals designated therein lower than rates concurrently in effect from and to intermediate points.

This application is based upon the desire of the interested carriers to continue the present method of making rates lower at the more distant points than at the intermediate points, these lower proportional rates being necessary to equalize the through rates on shipments from European points moving via Gulf ports, as against shipments moving via Atlantic seaboard ports, the ocean carriers' charges being higher from European ports to Gulf ports than from European ports to Atlantic seaboard ports.

A copy of the tariff in connection with which relief from the fourth section is desired, and to which reference is made in the foregoing, is attached hereto and made a part hereof.

Yours, very truly,

R. H. COUNTISS, *Agent*.

Subscribed and sworn to before me this ninth day of December, 1910.

JOHN N. KERRY, *Notary Public*.

My commission expires May 15, 1911.

[Endorsed: Interstate Commerce Commission. Received Dec. 13, 1910. Division of Mails and Files. Fourth Section Application No. 344.]

494 Transcontinental Freight Bureau, office 443 Railway Exchange, cor. Jackson Blvd. and Michigan Ave., Chicago.
R. H. Countiss, agent.

Application No. 5

DECEMBER 7, 1910.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

Application for relief from provisions of fourth section of amended commerce act in connection with the following tariffs:

Railroad reference.	Interstate Commerce Commission tariff.	Of agent—
Tariff No. 2-H and Supplement 1 thereto.	No. 930 and Supplement 1 thereto.....	R. H. Countiss.
Tariff No. 3-I and Supplement 2 thereto.	No. 926 and Supplement 2 thereto.....	R. H. Countiss.
Tariff No. 7-C and Supplements 5 and 7 thereto.	No. 921 and Supplements 5 and 7 thereto.	R. H. Countiss.
Tariff No. 9-C and Supplement 5 thereto.	No. 922 and Supplement 5 thereto.....	R. H. Countiss.
Tariff No. 10-C.....	No. 931 M.....	R. H. Countiss.
Tariff No. 8. R. 998 and Supplement 6 thereto.	No. 909 and Supplement 6 thereto.....	R. H. Countiss.
Tariff No. 8. R. 1004 and Supplement 4 thereto.	No. 924 and Supplement 4 thereto.....	R. H. Countiss.
Circular No. 18-F and Supplement 4 thereto.	No. 915 and Supplement 4 thereto.....	R. H. Countiss.

In the name and on behalf of each of the carriers parties to the above-named tariffs, the undersigned, acting as agent and attorney or under authority of concurrences on file with the commission from each of the said carriers, respectfully petitions the Interstate Commerce Commission for authority to continue all rates shown in the above-named tariffs from Pacific coast shipping points designated to the eastern destinations designated, lower than rates concurrently in effect from and to intermediate points.

This application is based upon the desire of the interested carriers to continue the present method of making rates lower at the more distant points than at the intermediate points; such lower rates being necessary by reason of—

Competition of various water carriers and of carriers partly by water and partly by rail operating from Pacific coast ports to Atlantic seaboard ports; competition of various water carriers operating to foreign countries from Pacific coast ports and competition of the products of foreign countries with the products of the Pacific coast; competition of the products of Pacific coast territory with the products of other sections of the country; competition of Canadian rail carriers not subject to the interstate commerce act; competition of the products of Canada, moving by Canadian carriers with the products of the United States; rates established via the shorter or more direct routes, but applied also via the longer or more circuitous routes.

Copies of the tariffs and circular in connection with which relief from the 4th section is desired, and to which reference is made in the foregoing, are attached hereto and made a part hereof.

Yours, very truly,

R. H. COUNTISS, *Agent.*

Subscribed and sworn to before me this 9th day of December, 1910.

JOHN N. KERRY,
Notary Public.

My commission expires May 15, 1916.

[Endorsed: Interstate Commerce Commission. Received Dec. 13, 1910. Division of Mails and Files. Fourth Section Application No. 205] 349

48545-16-28

- 496 Transcontinental Freight Bureau, office 443 Railway Exchange, cor. Jackson Blvd. and Michigan Ave., Chicago.
R. H. Countiss, agent.

Application No. 4.

DECEMBER 7, 1910.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

Application for relief from provisions of fourth section of amended commerce act in connection with the following tariffs:

Railroad tariff.	Interstate Commerce Commission tariff.	Of agent—
No. 5-F and Supplement 5 thereto.....	No. 918 and Supplement 5 thereto.....	R. H. Countiss.
No. 6-D and Supplement 6 thereto.....	No. 916 and Supplement 6 thereto.....	R. H. Countiss.
No. 8-D and Supplement 1 thereto.....	No. 932 and Supplement 1 thereto.....	R. H. Countiss.
No. 10-C and Supplement 1 thereto.....	No. 931 and Supplement 1 thereto.....	R. H. Countiss.
No. 11-C and Supplement 2 thereto.....	No. 925 and Supplement 2 thereto.....	R. H. Countiss.

In the name and on behalf of each of the carriers parties to the above-named tariffs, the undersigned acting as agent and attorney or under authority of concurrences on file with the commission from each of the said carriers, respectively petition the Interstate Commerce Commission for authority to continue all rates shown in the above-named tariffs from eastern shipping points designated to the Pacific coast terminal points and other points designated, lower than rates concurrently in effect from intermediate points, and to intermediate points in Canada and in the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Washington, and points east thereof.

This application is based upon the desire of the interested carriers to continue the present method of making rates lower at the more distant points than at the intermediate points, such lower rates being necessary by reason of—

Competition of various water carriers and of carriers partly by water and partly by rail operating from Atlantic seaboard ports to Pacific coast ports; competition of various water carriers operating from foreign countries to Pacific coast ports and competition of the products of said foreign countries with the products received at the said eastern shipping points; competition of the products of eastern and Atlantic coast points with the products moving to the Pacific coast from points in the interior; competition of Canadian rail carriers not subject to the Interstate Commerce act; competition of the products of Canada moving by Canadian carriers with the products of the United States; rates established via the shorter or more direct routes, but applied also via the longer or more circuitous routes.

- 497 Copies of the tariffs in connection with which relief from the 4th section is desired, and to which reference is made in the foregoing, are attached and made a part hereof.

Yours, very truly,

R. H. COUNTISS, *Agent.*

Subscribed and sworn to before me this 9th day of December, 1910.

JOHN N. KERRY,
Notary Public.

My commission expires May 15, 1911.

[Endorsed: Interstate Commerce Commission. Received Dec. 3, 1910. Division of Mails and Files, Fourth Section Application No. 342.] 350

498 Transcontinental Freight Bureau, office 443 Railway Exchange, cor. Jackson Blvd. and Michigan Ave., Chicago.
R. H. Countiss, agent.

Application No. 2.

DECEMBER 7, 1910.

To the INTERSTATE COMMERCE COMMISSION,

Washington, D. C.:

Application for relief from provisions of fourth section of amended commerce act in connection with the following tariffs:

Railroad reference.	Interstate Commerce tariff.	Commission	Of agent—
Tariff No. 1-L and Supplements 1, 2, and 3 thereto.	No. 13 and Supplements 1, 2, and 3 thereto.		C. W. Bullen.
	No. 225 and Supplements 1, 2, and 3 thereto.		J. F. Tucker.
	No. 929 and Supplements 1, 2, and 3 thereto.		R. H. Countiss.
Tariff No. 4-H and Supplements 1, 2, 3, and 4 thereto.	No. 14 and Supplements 1, 2, 3, and 4 thereto.		C. W. Bullen.
	No. 226 and Supplements 1, 2, 3, and 4 thereto.		J. F. Tucker.
	No. 928 and Supplements 1, 2, 3, and 4 thereto.		R. H. Countiss.
Circular No. 16-F and Supplement 4 thereto.	No. 9 and Supplement 4 thereto.....		C. W. Bullen.
	No. 168 and Supplement 4 thereto.....		J. F. Tucker.
	No. 915 and Supplement 4 thereto.....		R. H. Countiss.

In the name and on behalf of each of the carriers that are parties to the above-named tariffs, the undersigned, acting as agents and attorneys or under authority of concurrences on file with the commission from each of said carriers, respectfully petition the Interstate Commerce Commission for authority to publish a clause in said tariffs providing as follows:

The sum of the local rates (class or commodity) to and from any intermediate point, when less than the through rates (class or commodity) shown in this tariff, will apply as the through rate, or—

The charges collected for the transportation of a shipment from and to points named in this tariff or in tariff or list of points referred to in this tariff and thereby made a part of this tariff, must not exceed what the charges would be by applying thereon the sum of the lawful intermediate rates in force via the route over which the shipment moves.

If the commission can not see its way clear to grant us authority to publish one of the clauses above suggested, we would ask that we be given authority to waive the clause of the 4th section of the amended act, which provides that a through rate shall not exceed the aggregate of the intermediate rates subject to the provisions of the act, and thereby permit us to continue to apply the published through rates as shown in the above-named tariffs.

[Endorsed: Interstate Commerce Commission. Received Dec. 13, 1910. Division of Mails and Files. Fourth Section Application No. 352.]

499 We believe the difficulty of publishing a through tariff to and from territorial groups which would not in some instances contain rates which would exceed the sum of the local rates is apparent; for instance, some published through rate from a shipping point immediately east of the Chicago group or territory might, through oversight or otherwise, exceed the sum of the local rates from such shipping point to the nearest point taking the Chicago rate basis, plus the Chicago rate thence to destination.

The difficulty of publishing through rates which would in no case be in excess of the combined local rates is seen in some of the recent orders of the commission in the intermountain cases, wherein the maximum through rates prescribed by the commission exceed the sum of the local rates.

Copies of the tariffs and circular in connection with which relief from the 4th section is desired, and to which reference is made in the foregoing, are attached hereto and made a part hereof.

Yours, very truly,

J. F. TUCKER, *Agent*.

Subscribed and sworn to before me this 9th day of December, 1910.

ROLAND A. SPERRY,
Notary Public.

My commission expires Nov. 23, 1913.

C. W. BULLEN, *Agent*.
By JAS. BLOOMINGDALE.

Subscribed and sworn to before me this 12th day of December, 1910.

FREDERICK B. BLACKMAN,
Notary Public.

My commission expires March 30, 1911.

R. H. COUNTISS, *Agent*.

Subscribed and sworn to before me this 9th day of December, 1910.

JOHN N. KERRY,
Notary Public.

My commission expires May 15, 1911.

(Indorsed on back:) Office of the clerk, received Jun. 27, 1916,
Supreme Court U. S.

500 (Indorsed on back:) File No. 25,245. Supreme Court U. S. October term, 1916. Term No. 452. The United States et al., appellants, vs. Merchants' & Manufacturers' Traffic Ass'n, etc., et al. Stipulation as to printing record. Filed June 27, 1916.

(Indorsed on back:) File No. 25,245. N. California, D. C. U. S. Term No. 452. The United States of America, Interstate Commerce Commission, Atchison, Topeka & Santa Fe Railway Company, et al., appellants, vs. Merchants and Manufacturers Traffic Association of Sacramento et al.—Filed April 17, 1916.—File No. 25,245.



In the Supreme Court of the United States.

OCTOBER TERM, 1915.

UNITED STATES OF AMERICA, INTERSTATE
Commerce Commission, Atchison, To-
peka & Santa Fe Railway Company,
Chicago, Rock Island & Pacific Rail-
way Company, Denver & Rio Grande
Railroad Company, Southern Pacific
Company, and Western Pacific Railroad
Company, appellants,

v.

MERCHANTS' & MANUFACTURERS' TRAF-
fic Association of Sacramento, Traffic
Bureau of San Jose Chamber of Com-
merce, Stockton Traffic Bureau, and
City of Santa Clara.

No. 962.

***APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.***

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General, and in accordance with the provisions of section 2 of the act of June 16, 1910, 36 Stat. 542, and the urgent deficiency act of October 22, 1913, 38 Stat. 208, 220, moves the court

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In the Supreme Court of the United States.

OCTOBER TERM, 1916.

UNITED STATES OF AMERICA, INTERSTATE
Commerce Commission, Atchison, To-
peka & Santa Fe Railway Company,
Chicago, Rock Island & Pacific Railway
Company, Denver & Rio Grande Rail-
road Company, Southern Pacific Com-
pany, Union Pacific Railroad Company,
and Western Pacific Railroad Com-
pany, appellants, No. 452.

v.

MERCHANTS' AND MANUFACTURERS' TRAF-
fic Association of Sacramento, Traffic
Bureau of San Jose Chamber of Com-
merce, Stockton Traffic Bureau, and
City of Santa Clara, appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

BRIEF FOR THE UNITED STATES.

STATEMENT OF CASE.

Appellees instituted this suit against appellants, in the District Court for the Northern District of California, to enjoin the enforcement of and

compliance with two orders of the Interstate Commerce Commission based upon "the long and short haul clause" (sec. 4) of the act to regulate commerce, as amended by the act of June 18, 1910 (c. 309, 36 Stat. 539, 547).

Upon the preliminary hearing, an interlocutory injunction was granted (R., p. 356; 231 Fed. 292), but subsequently set aside (R., p. 356). After final hearing, a decree was entered on March 27, 1916, granting a perpetual injunction (R., p. 370). Appellants promptly entered an appeal and applied for a stay of the final decree, which was granted by Mr. Justice McKenna on the 17th day of April, 1916. Motion to advance the hearing of the case was made and granted, and the case is now here for hearing upon the merits.

STATEMENT OF FACTS.

In 1910 the transcontinental railroads, including appellant railroads, filed with the Interstate Commerce Commission applications (Nos. 205, 342, 343, 344, 349, 350, 352) for relief from the provisions of the fourth section of the amended commerce act, asking for authority to continue all rates, shown on their tariffs, from the Atlantic seaboard and interior points to the Pacific coast terminals, lower than rates concurrently in effect from and to intermediate points. Acting upon these applications, the commission, following its report of June 22, 1911 (21 I. C. C. 329; R., p. 125), issued on July 31, 1911, fourth section order No. 124 (R., p. 116),

whereby zones were established and rates fixed from points within such zones to the Pacific coast terminal cities. This order of the commission was attacked, but upheld by this court in the *Intermountain Rate Cases* (234 U. S. 476). Subsequent to the decision in the *Intermountain Rate Cases*, the interested railroads filed with the Interstate Commerce Commission, in the original proceedings, a supplemental application (R., p. 235), asking, among other things, for certain changes in the boundaries of the zones and modification of the order with respect to certain tariff schedules, mentioning schedules B and C, the only ones relevant to this proceeding. After full and complete hearings and consideration of changed conditions arising out of the opening of the Panama Canal, the commission, on January 29, 1915, made an order (R., p. 323) upon these applications, by which the railroads were denied the full extent of the relief asked with respect to the 182 cities referred to as Pacific coast terminals, except as to San Diego, Wilmington, East Wilmington, San Pedro, San Francisco, and Oakland, Cal.; Portland, Oreg.; and Tacoma and Seattle, Wash., though some relief was granted. This action of the commission, however, was not final, but the railroads were requested to submit plans as to the best method for carrying out the policies outlined in the commission's report. The railroads submitted plans as requested, which were, after full hearing

and argument, taken under consideration by the commission, and resulted in the report (34 I. C. C. 13; R., p. 339) and order (R., p. 347) of the commission of April 30, 1915, which modified the order of January 29, 1915, in no respect relevant to the issues in this proceeding, since the cities represented by appellees are not included in either order as entitled to coast terminal rates.

All of the carriers, including appellant railroads, pursuant to the requirements of these two orders, filed and published tariffs thereunder. Appellees thereupon instituted this suit to enjoin the enforcement of and compliance with these orders. Pending this proceeding, but prior to the entering of the decree, the orders of the commission became effective, and the rates authorized thereby, which had been filed and published, became the only lawful rates that could be collected.

On March 27, 1916, after the rates authorized by the orders of the commission had become effective and freight was actually moving thereunder, the court below entered a final decree annulling the orders of the commission and enjoining the enforcement thereof and compliance therewith. The court further adjudged that the tariffs filed under said orders were "without due authority of law" and enjoined the collection of rates therein prescribed. By this decree lawful rates established by the railroads, with the consent of the commission, were set aside and no provision made for other rates which

could be lawfully collected . It is this decree which is now attacked.

SPECIFICATION OF ERRORS.

The assignments of error appear on pages 373 to 380 of the record. In substance they charge that the District Court erred: In holding the orders of the commission, dated January 29 and April 30, 1915, in so far as they affected appellees, and the tariffs filed pursuant thereto, were without authority of law; in cancelling and setting aside same and enjoining enforcement thereof or compliance therewith; and in entertaining jurisdiction in said suit.

ARGUMENT.

The sole ground upon which the court annulled the orders in question and enjoined enforcement of and compliance with same was that no sufficient application for the relief granted was filed by the carriers as provided in section 4 of the act. The court, in the majority opinion, thus states the proposition:

The discussion of the questions involved in these proceedings has taken a wide range; but we are of the opinion that the only question we have to deal with in this case is the statutory power of the Interstate Commerce Commission. Had the commission, in the absence of an application by the carriers, the statutory power to make the order it did? Can the commission suspend the long-and-short-haul clause of section 4 of the act to regulate commerce without an application

being made to it by the carriers for that purpose and a hearing upon that particular application as in a special case? We are of the opinion that this is beyond the statutory power of the commission; and such we understand to be the decision of the Supreme Court in *United States v. Louisville & Nashville Railroad*, 235 U. S. 314, 322. (231 Fed. 292, 300; R., p. 365.)

Judge Bledsoe, in the dissenting opinion, said:

By the majority opinion such invalidity is made to rest upon the single fact that no "application" for the order had been made, and that, under the construction given to section 4 of the act to regulate commerce, as announced in 235 U. S. 314, 322, the making of such "application" is a necessary prerequisite to action on the part of the commission. I do not so construe the section and do not so read the decision. (231 Fed. 292, 300; R., p. 366.)

With respect to this ruling and the granting of the injunction, the Government maintains that—

- I. Proper and sufficient applications were filed;
- II. In the circumstances, applications, technically perfect, were not necessary;
- III. The annulment of orders and granting of injunction were not justified upon other grounds.

I.

Proper and sufficient applications were filed.

Upon passage of the amendment to the long- and-short-haul clause (June 18, 1910, c. 309, 36 Stat. 539, 547) all existing rates charging more for a shorter than a longer haul over the same line or route in the same direction became unlawful unless authorized by the commission.

The amended section is as follows:

SEC. 4. That it shall be unlawful for any common carrier subject to the provisions of this act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this act; but this shall not be construed as authorizing any common carrier within the terms of this act to charge or receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from

time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: *Provided further*, That no rates or charges lawfully existing at the time of the passage of this amendatory act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission.

Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

Appellant and other carriers in order to conform to the law filed their " applications for relief from the provisions of the fourth section of the amended commerce act."

These applications filed by the carriers were known as Nos. 205, 342, 343, 344, 349, 350, and 352 (R., p. 391 et seq.) and were the same applications upon which were based the order of the commission, known as fourth section order No. 124, upheld

by this court in the *Intermountain Rate Cases* (234 U. S. 476).

In the *Intermountain Rate Cases* Mr. Chief Justice White thus describes the applications:

Following the form prescribed by the commission after the amendment in question, the seventeen carriers who are appellees on this record made to the Interstate Commerce Commission their "application for relief from provisions of fourth section of amended commerce act in connection with the following tariffs." The tariffs annexed to the applications covered the whole territory from the Atlantic seaboard to the Pacific coast and the Gulf of Mexico, including all interior points and embracing practically the entire country, and the petition asked the Interstate Commerce Commission for authority to continue all rates shown on the tariffs from the Atlantic seaboard to the Pacific coast and from the Pacific coast to the Atlantic seaboard and to and from interior points lower than rates concurrently in effect from and to intermediate points. (*Intermountain Rate Cases*, 234 U. S. 476, 478.)

All were substantially the same. No. 205, copy of which appears in the appendix of this brief (p. 27), may be taken as typical.

Each application was entitled "Application for relief from provisions of fourth section of amended commerce act in connection with the following tariffs" and stated that "this application is based upon the desire of the interested carriers to con-

tinue the present method of making rates lower at the more distant points than at the intermediate points, such lower rates being necessary by reason of competition of various water carriers and of carriers partly by water and partly by rail operating from Atlantic seaboard ports to Pacific coast ports." (R., p. 392.)

In addition to these applications, the carriers, after the decision in the *Intermountain Rate Cases*, filed a supplemental application (Appendix B of this brief, p. 30; R., p. 235) asking for further relief from the long-and-short-haul clause.

The court below found that, with respect to appellees, these documents, styled "Application for relief from provisions of the fourth section of amended commerce act in connection with the following tariffs" were not such, but were "Applications to the Interstate Commerce Commission for authority to continue the then practice of making commodity rates to the Pacific coast lower than to intermediate, or Nevada, points." (R., p. 361.)

The majority opinion puts the question, "Can the commission suspend the long-and-short-haul clause of section 4 of the act to regulate commerce without an application being made to it by the carriers for that purpose?" (R., p. 365.) This they answered in the negative, and found that there was "no application on the part of the carriers to suspend the long-and-short-haul clause of section 4 with respect to these terminal points." (R.,

p. 361.) Upon this ground alone the decree was based.

Reduced to the forms of logic, the court's position seems to be expressed in the following syllogism:

All valid orders, the effect of which is to change terminals, are orders based solely upon an application therefor.

The commission's order, the effect of which is to change terminals, is not an order based solely upon an application therefor.

Therefore the commission's order is not a valid order.

The Government challenges the major premise.

The court, merely because it conceived the result to be the same, assumes that an order denying the continuance of existing equivalent rates to an inland and a coast city and requiring the establishment of different rates, is an order changing terminals; and also assumes, without warrant, that such an order was responsive only to an application to change terminals. The order, as will be shown, was one prescribing the extent of relief from the fourth section, and not one changing terminals—whatever the term may mean—though the incidental effect might be the same. An identical result might flow from valid orders based upon applications entirely unlike, as applications for relief from the fourth section, from discriminatory rates, for change of terminals, etc., and yet be equally responsive to each.

We proceed now to show the sufficiency of the applications and the responsiveness of the order thereto.

The amendment of June 18, 1910, affected a vast number of rates all over the United States and it became necessary, within a short time, for the commission to consider and approve or readjust all affected rates. The carriers, following the form prescribed by the commission, filed applications for relief, which covered all these rates. It was impracticable to conform to the law in any other manner than that adopted by the carriers.

They intended and the commission and this court understood that the applications filed were for relief from the the long-and-short-haul clause with respect to each particular locality, in relation to every other locality, mentioned in the attached tariffs, to the extent shown by the rates therein set forth. The railroads simply made their application by wholesale, suggesting the extent of relief desired, and the commission acted upon it in the same manner. These applications therefore should be considered and construed as if a separate application had been filed to cover each instance where relief was applicable.

For example, the application of the carrier to be permitted to charge the tariff rate of 75 cents on canned goods from New York to Sacramento (R., p. 300) and San Francisco (R., p. 300), respectively, while at the same time charging \$1.10 for the lesser haul of the same commodity to Reno (R., p. 291),

in effect asked for relief from the fourth section clause and suggested the extent thereof. The commission upon such application therefore might very properly say, as it did in the order now contested, we will grant your request to charge less for the longer haul, but we, in view of our duty to " prescribe the extent to which such designated common carriers may be relieved from the operations " of the section, can not grant the extent of the relief asked for; you may put into effect the 75-cent rate to San Francisco (R., p. 35) but must increase your Sacramento rate to 85 cents (R., p. 35), because the rate you suggest is the same as that to San Francisco while the water competition is not the same. So we might go on through the whole list, considering each particular locality and rate mentioned in the tariffs attached to the application in their relation to every other locality and rate.

The commission had the power to grant the applications in part and to deny them in part (*Intermountain Rate Cases*, 234 U. S. 476, 479) and the evidence was ample to support its action. The record shows that the terminal rates previously enjoyed by Sacramento and the other inland cities were attributable to the competition of steamship lines, which absorbed the rail charges from the ports of call to these cities, and that their disallowance by the commission resulted from the discontinuance of these absorptions.

Respondent states, as shown in the record before it and as set out in its several reports

hereinafter referred to and made exhibits to this answer, the reason which in the past induced the rail carriers to make terminal rates to these four cities was the fact that the ocean carriers between the east and west coasts of the United States, in order to secure tonnage for their ships, formerly absorbed the inland locals from the port of San Francisco. The passage of the Panama Canal act and the opening of the Panama Canal caused the ocean carriers to discontinue absorbing the local rail rates, for by doing so the ocean carriers would, by the provisions of the Panama Canal act, subject themselves to the jurisdiction of the Interstate Commerce Commission and of the act to regulate commerce. * * * The discontinuance of these absorptions changed the competitive conditions at San Jose, Sacramento, Santa Clara, and Stockton, which cities are not similarly situated as the terminal points named in the order. * * * (Answer of Interstate Commerce Commission, R., p. 74.)

Adopting a different view, the district court in effect held that: Since the difference in the extent of the relief granted operates to eliminate Sacramento and other cities "from Pacific coast terminals and their transfer to the newly created backhaul territory" (R., p. 363; 231 Fed. 292, 298), and since the carriers' application did not in so many words ask for such transfer, the order of the commission is not supported by the application filed, though the relief granted may be responsive thereto.

This is giving not only a highly technical and strained construction to pleadings in proceedings before the commission, which in fact should be liberally construed (*Interstate Commerce Commission v. Baird*, 194 U. S. 25, 44), but also, it is submitted, presents the fallacy of arbitrarily attributing a result that might flow from either of two causes, to one alone, illogically excluding the other.

We submit that the applications were sufficient and the orders complained of entirely responsive thereto.

II.

In the circumstances, applications technically perfect were not necessary.

Even if the applications were not sufficiently specific to constitute technical applications for relief from the fourth-section clause, still, in the circumstances, the orders contested would not be invalid.

The law only provides "That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for a longer than for a shorter distance for the transportation of passengers or property." It makes no provision for nor requires notice to anyone. No party but the carrier is necessary to the proceeding. Unless others voluntarily intervene it is strictly a proceeding between the carriers

and the commission, and the former are the only party entitled to take advantage of any technicality or formal insufficiency in the proceeding. The objection here urged for the first time, not by the carriers but by associations which allege they were not parties to the proceedings before the commission, is highly technical and does not affect the substance or justice of the result reached. It was, if sound, such as could be waived, and was waived by the carriers. Not only did they fail to object, but, on the contrary, accepted the order of the commission as entirely responsive to their application, proceeded to comply therewith by establishing rates in conformity thereto, and now in this proceeding, where third parties are attacking the validity of the order, join with the Government in seeking to uphold same.

As pointed out in the dissenting opinion of Judge Bledsoe, the substantial condition which Congress was insisting upon was not the filing of an application but the consent of the commission.

Now the thing that Congress was insisting upon as a condition precedent to the creating of an exception to the general rule was not the making of an application by the carrier, but the granting of consent by the commission. It was the judgment of the commission, after investigation, that was to warrant the setting aside of the statutory rule, and the provision for the making of an "application" was intended merely as a means of securing such investigation and

judgment. The making of an application by the carrier was of the form, perhaps, but not of the substance of the proceeding; it was a mere means to an end, and should not, in my judgment, be confounded with the end itself. The large purpose of the amendment to section 4 was to substitute the *judgment of the commission* for that of the carrier as to the necessity for a violation of the long and short haul clause of the commerce act. The amendment took "from the carriers the deposit of public power previously lodged in them and vested it in the commission as a primary instead of a reviewing function. (Intermountain Cases, 234 U. S. 476)." (231 Fed. 292, 301; R., p. 366.)

Furthermore, as held by Judge Bledsoe, if the application were insufficient to support the order, the filing of tariffs in conformity with the order should be construed to be an application of the carriers for the relief afforded by the commission's approval and allowance of the rates set out in the tariffs.

Conceding, however, that the making of an application is a jurisdictional prerequisite to the charging of a higher rate for a shorter haul, the filing of the tariffs with the commission by the carriers involved, pursuant to the order of April 30, 1915, could in itself be reasonably construed as such application. (It appears from the record that such tariffs were filed, and being approved by the commission, have been officially promulgated.) (R., p. 368, 369.)

III.

The annulment of orders and granting of injunction were not justified upon other grounds.

Passing from the ground upon which the District Court relied, the Government maintains that the decree can not be supported upon the other grounds advanced by appellees.

These grounds may be reduced to three general propositions:

1. Appellees contended that they, though inland cities, had been designated "California terminals" by the carriers and had enjoyed the same rates as other so-called California terminals which were ports of call; that the commission's orders readjusting these rates, by requiring appellees to pay higher rates than the ports of call, were unjust and discriminatory and their enforcement should be enjoined.

It is sufficient answer to this proposition to say that the question of discrimination and justness of rates is one of fact for the determination of the commission, and its finding will not be reviewed by the courts, if supported by substantial evidence. This has been so frequently held by this court that the cases need only be cited without comment.

Los Angeles Switching case, 234 U. S. 294.

United States v. Louisville & Nashville Railroad Co., 235 U. S. 314.

Atchison Railway Co. v. United States, 232 U. S. 199.

- Texas & Pacific Railway Co. v. Abilene Cotton Oil Company*, 204 U. S. 426.
Baltimore & Ohio R. R. Co. v. Pitcairn Coal Co., 215 U. S. 481.
Interstate Commerce Commission v. Louisville & Nashville R. R. Co., 227 U. S. 88.
Interstate Commerce Commission v. Delaware, Lackawanna & Western R. R. Co., 220 U. S. 235.
Interstate Commerce Commission v. Union Pacific R. R. Co., 222 U. S. 541.
Procter & Gamble Co. v. United States, 225 U. S. 282.
Intermountain Rate Cases, 234 U. S. 476.
Illinois Central R. R. Co. v. Interstate Commerce Commission, 206 U. S. 441.
Interstate Commerce Commission v. Illinois Central R. R. Co., 215 U. S. 452.
Interstate Commerce Commission v. Chicago & Alton R. R. Co., 215 U. S. 479.
Interstate Commerce Commission v. Chicago, Rock Island & Pacific Ry. Co., 218 U. S. 88.

The evidence taken before the commission was not made a part of the record in this case, but the findings of fact in the reports of the commission, which in the circumstances must be accepted as true, show that there was ample evidence to support the commission's orders. Appellees' remedy, therefore, is by application to the commission under the provisions of section 13 of the act.

It should be further observed that the rates in question were prescribed in contemplation of the

carriers' applications for relief from the fourth section, and the question of discrimination was incidental. If discrimination resulted, relief must be sought, not by overturning the fourth-section orders in an attack upon them in the courts, but by their modification in a proper proceeding before the commission raising the particular question.

That order is alone open to review. Whether other persons, cities or areas of territory have grounds of complaint, the way is open by application to the commission for inquiry and remedy. In that inquiry many elements may enter upon which the judgment of the commission should first pass, and of which the courts should not be called upon in advance to intimate an opinion. The reasons for this we have indicated, and they will be found at length in the cases which we have cited. (*Interstate Commerce Commission v. Chicago, Rock Island & Pacific Railway Company*, 218 U. S. 88, 110.)

2. The second proposition of appellees is that the order of the commission deprived them of the equal protection of the law and prescribed confiscatory rates. This, they claim, results from the alleged fact that they had no notice of the proceedings before the commission and that no evidence was adduced in their behalf; and from the establishing of rates higher than formerly required of them and higher than the rates to ports of call.

The fourth section of the act refers only to carriers, and there is no provision requiring the serv-

ice of notice upon any person, association, or locality. The carrier and the commission are the only parties contemplated by the section, and it would be wholly impracticable to require service of notice upon all interested parties, for the interests involved would be coextensive with commerce itself. The pendency of the proceeding is itself notice to all interested.

But even if notice were required by the section, the form thereof is certainly not prescribed, and any notice of the pendency of the proceeding would be sufficient.

The cities of San Jose and Santa Clara had actual notice that the commission was considering the questions determined by the orders complained of. In the report of the commission in the proceedings known as "Investigation and Suspension Docket No. 405; Transeontinental Commodity Rates to San Jose, Santa Clara, and Marysville, California," and "No. 6717, *San Jose Chamber of Commerce v. Atchison, Topeka & Santa Fe Railway Company et al.*" (32 I. C. C., 449, 457), wherein the cities of San Jose and Santa Clara were parties, the commission gave notice that "the matter of the extension of terminal commodity rates to interior California points is under consideration by the commission on carriers' fourth section applications Nos. 205, etc., and will be disposed of there."

Appellee, Merchants and Manufacturers Traffic Association of Sacramento, not only had notice of the proceedings before the Interstate Commerce

Commission, but by its counsel, G. J. Bradley, entered an appearance therein. (R., p. 276.)

As averred in the answer of the Interstate Commerce Commission, and nowhere contradicted, "G. J. Bradley, representing the cities of Sacramento and Stockton, appeared at said time and place [April 12, 1915, hearing room of the Interstate Commerce Commission, Washington, D. C.] and orally addressed this respondent in behalf of the cities of Sacramento and Stockton." (R., p. 78.)

It is seen, therefore, that, even if notice were required, the record shows that all appellees had notice and appeared in the proceedings before the commission, and "that at no time in any of said hearings did the petitioners (appellees), or any of them, ever make any objection to or complaint of any lack of notice or irregularity in the procedure thereof." (R., p. 78.)

It is difficult to find in the petition or elsewhere in the record any reasonable basis for appellees' claim that the commission's orders are confiscatory and "take from them property without due process of law." Three of the appellees are apparently voluntary associations and not legal entities capable of suing, while the fourth is a municipal corporation. They sue in a representative capacity, but do not allege the taking of particular property of definite persons. The allegations are too vague and indefinite to support the contention.

To establish their claim of confiscation they apparently rely upon the fact that they have been denied rates equivalent to those to ports of call and that rates on some commodities have been advanced. They raise no question as to the intrinsic reasonableness of the rates prescribed.

The question of whether or not a rate is confiscatory has reference to the carrier alone. Where a rate is intrinsically reasonable, there can be no such thing as a confiscatory rate relatively to the shipper. (*Southern Pacific Co. v. Interstate Commerce Commission*, 219 U. S. 433.) Where a carrier affords a reasonable rate the shipper can not complain that he is denied the equal protection of the law or that his property is confiscated because another shipper or locality has secured a better rate. Such a situation presents a question of discrimination, which is, as we have seen, for the determination of the commission and not of the courts.

3. Appellees further contend that the orders of the commission were unauthorized because there were no such changed conditions as contemplated in the amended fourth section, the pertinent part of which is as follows:

Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commis-

APPENDIX A.

DECEMBER 7, 1910.

*To the Interstate Commerce Commission, Wash-
ington, D. C.*

APPLICATION FOR RELIEF FROM PROVISIONS OF FOURTH SECTION OF
AMENDED COMMERCE ACT IN CONNECTION WITH THE FOLLOWING
TARIFFS.

Railroad reference.	Interstate Commerce Com- mission tariff.	Of agent.
Tariff No. 1-L and Supplements 1, 2, and 3 thereto.	No. 13 and Supplements 1, 2, and 3 thereto.	C. W. Bullen.
	No. 225 and Supplements 1, 2, and 3 thereto.	J. F. Tucker.
	No. 929 and Supplements 1, 2, and 3 thereto.	R. H. Countiss.
Tariff No. 4-H and Supplements 1, 2, 3, and 4 thereto.	No. 14 and Supplements 1, 2, 3, and 4 thereto.	C. W. Bullen.
	No. 226 and Supplements 1, 2, 3, and 4 thereto.	J. F. Tucker.
	No. 928 and Supplements 1, 2, 3, and 4 thereto.	R. H. Countiss.
Circular No. 16-F and Supplement 4 thereto.	No. 9 and Supplement 4 thereto.	C. W. Bullen.
	No. 168 and Supplement 4 thereto.	J. F. Tucker.
	No. 915 and Supplement 4 thereto.	R. H. Countiss.

In the name and on behalf of each of the carriers, parties to the above-named tariffs, the undersigned, acting as Agents and Attorneys or under authority of concurrences on file with the Commission from each of the said carriers, respectfully

petition the Interstate Commerce Commission for authority to continue all rates shown in the above-named tariffs from eastern shipping points designated to the Pacific coast terminal points and other points designated, lower than rates concurrently in effect from intermediate points, and to intermediate points in Canada and in the States of Arizona, California, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Washington, and points east thereof.

This application is based upon the desire of the interested carriers to continue the present method of making rates lower at the more distant points than at the intermediate points, such lower rates being necessary by reason of—

Competition of various water carriers and of carriers partly by water and partly by rail operating from Atlantic seaboard ports to Pacific coast ports; competition of various water carriers operating from foreign countries to Pacific coast ports and competition of the products of said foreign countries with the products received at the said eastern shipping points; competition of the products of Eastern and Atlantic coast points with the products moving to the Pacific coast from points in the interior; competition of Canadian rail carriers not subject to the Interstate Commerce Act; competition of the products of Canada moving by Canadian carriers with the products of the United States; rates established via the shorter or more direct routes, but applied also via the longer or more circuitous routes.

Copies of the tariffs and circular in connection with which relief from the fourth section is de-

sired, and to which reference is made in the foregoing, are attached hereto and made a part hereof.

Yours, very truly,

J. F. TUCKER, *Agent.*

Subscribed and sworn to before me this 9th day of December, 1910.

ROLAND A. SPERRY,
Notary Public.

My commission expires November 23, 1913.

C. W. BULLEN, *Agent.*

By JAS. BLOOMINGDALE.

Subscribed and sworn to before me this 12th day of December, 1910.

FREDERICK B. BLACKMAN,
Notary Public.

My commission expires March 30, 1911.

R. H. COUNTISS, *Agent.*

Subscribed and sworn to before me this 9th day of December, 1910.

JOHN N. KERRY,
Notary Public.

My commission expires May 15, 1911.

APPENDIX B.

CHICAGO, July 9, 1914.

*Application for modification of Fourth Section
Order No. 124—Applications Nos. 205, 342, 344,
349, 350, 352.*

The INTERSTATE COMMERCE COMMISSION,

Washington, D. C.

GENTLEMEN: In the name and on behalf of each of the carriers parties to the above-named applications for relief from the provisions of the fourth section of the act to regulate commerce, as amended June 18, 1910, the undersigned, acting as agent and attorney or under authority of concurrences filed with the commission for each of the said carriers, respectfully petitions the Interstate Commerce Commission:

1. To extend the effective date of its Fourth Section Order No. 124 of June 22, 1911, until October 1, 1914, to enable carriers to publish, file, and make effective rates to conform with requirements of the order except on commodities shown in the attached list, and designated as schedule "C," and as to those commodities extend the effective date of its order until January 1, 1915.

2. To modify its order so that the zone boundary lines provided therein will conform to the territorial boundary lines approved by the commission after hearing and investigation (see I. and S. Docket 207; I. C. C. 28-1) and now published in

the Westbound Transcontinental Tariff, such modification being necessary to permit the uniform application of rates from eastern points of origin to both Pacific coast terminal and intermediate points under Fourth Section Order No. 124.

3. To grant the interested carriers a hearing beginning on or about October 6, 1914, upon the commodities enumerated in schedule C, it being the purpose of the carriers to show that as to these commodities the conditions are such as to justify a greater degree of relief than is afforded under the original Fourth Section Order No. 124.

There is attached hereto and made a part hereof three exhibits, as follows:

Schedule A: A list of commodities upon which the rates to the Pacific coast terminals will apply as the maximum to intermediate points of destination, and upon which no relief is requested. This schedule contains many commodities, particularly those in which the individual is much interested as a consumer, such as fruit, grain, flour, vegetables, and other products of the soil; agricultural implements, building material, etc., upon some of which the rates are low but upon which the carriers will continue to apply the rates as the maximum.

Schedule B: A list of commodities subject to the competition at the Pacific coast terminals of carriers by sea, but upon which the rates to said Pacific coast terminals via the rail routes are generally not less than \$2 per 100 pounds when in less than carload shipments, and \$1 per 100 pounds when in carload shipments, and as to which the carriers will observe the provisions of Fourth Section Order No. 124.

Schedule C: A list covering generally manufactured commodities subject to the most severe competition at the Pacific coast terminals of carriers by sea, and upon which the rates to said Pacific coast terminals via the rail routes are less than \$2 per 100 pounds when in less than carload shipments and less than \$1 per 100 pounds when in carload shipments, which rates are subnormal to a marked degree, measured by any recognized standard, such as rates fixed by the commission as reasonable rates in and of themselves from eastern points to the territory west of the Missouri River, but are necessary to move a share of this sea-competitive traffic via the rail routes; also to enable manufacturers and shippers at points of production not located directly upon the Atlantic seaboard to share in the trade of the Pacific coast.

The commission stated in its opinion that the average rate obtainable upon traffic to the Pacific coast terminals was sufficient to warrant the application of all such rates in accordance with the original Order No. 124; but it is pointed out that these schedule C rates, which, measured by recognized standards, are so low as to warrant the suggestion that they should not be used as the measure of or basis for rates to intermediate points, since it may fairly be said that, while the acceptance of such traffic by the rail carriers will not result in a burden upon other traffic, that the use of the rates as a basis for rates to intermediate points will make necessary an adjustment of rates on other traffic not proper under the circumstances.

What carriers now ask is sufficient time to place before the commission with respect to the commodities shown in schedule C such evidence as will,

in their opinion, completely justify a greater degree of relief from the provision of the amended fourth section than is granted in Order No. 124, it being understood that, if this petition is granted, order issued by the commission after hearing the testimony which it is desired to present will be promptly complied with.

The time for filing applications for relief from the amended fourth section expired February 17, 1911, and these cases were heard in March, 1911. They were the first important cases of this kind dealt with under the amended law. Its meaning was not as fully defined and understood as it has now become and carriers were not prepared nor was it possible for them to prepare themselves to show the conditions surrounding the traffic involved as it should be shown and as they feel now that they are prepared to show. Complete data was not at hand nor available, nor had the method of analyzing these things been developed to the perfection since obtained. Carriers feel that under later practice and experience they can present convincing facts and arguments in support of certain modifications which should be before the commission before the case is finally disposed of.

As the result of conference between shippers and carriers since the original order was made, and after informal conference with commission, commodity rates from all eastern points to intermountain territory concerned were established upon all commodities in the list that moved in carloads in sufficient volume to justify commodity rates. The adjustment is generally satisfactory to interior shippers, and the commission by formal order per-

mitted the rates to go into effect. These rates reduced the then existing rates very considerably and, it seems fair to state, are reasonably satisfactory to shippers. The complaints of interior shippers have almost wholly been directed against discrimination and but little against the rates in and of themselves. Before Order No. 124 was made the commission reduced all the class rates from eastern points to all intermountain territory. This adjustment, in order to maintain a reasonable relation, caused a reduction either by order of the commission or voluntary act of carrier from all western territory to intermountain territory not only in the class rates but, because of changes in the westbound commodity rates, certain changes had to be made in the eastbound commodity rates to intermountain territory. All these changes in rates at intermountain points have given the intermountain territory such a large measure of relief in the direction of its request and that to-day the intermountain territory is not suffering in its competition with terminal points on account of rates via the rail routes.

On account of the large amount of revenue and changes in rate relation involved, it is hoped the commission will grant this application, so that before final action is taken the situation as it exists to-day will be clearly before them.

Yours, respectfully,

R. H. COUNTISS, *Agent.*

SYNOPSIS AND INDEX.

STATEMENT OF THE CASE

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Transcontinental carriers in February, 1911, pursuant to provisions of fourth section of act to regulate commerce, as amended in 1910, applied to Commission for authority to continue then current practice of making commodity rates to Pacific coast terminals lower than to intermountain territory. Commission after hearing denied authority to continue such lower rates from certain defined territory and carriers applied to Commerce Court for injunction against Commission's order. Judgment of Commerce Court annulling order reversed by this court June 22, 1914 (234 U. S. 476).

Prior to July 1, 1914, ocean carriers between east and west coasts made practice of absorbing inland charges from ports of call. After effective date of Panama Canal act, however, ocean carriers discontinued absorption of such charges, thus removing direct ocean competition from interior points.

In October, 1914, upon application of carriers, Commission held further hearing and in supplemental report and order, dated January 29, 1915, defined Pacific coast terminals as ports accessible to ocean steamships, asked carriers to submit plan for constructing rates to intermediate points, and suggested that such rates might be somewhat lower than full combination of terminal and local rates. By order dated April 30, 1915, Commission authorized carriers to construct such rates by adding to terminal rates not more than 75 per cent of local rates from terminal to destination, thereby allowing carriers greater relief from provisions of fourth section with respect to San Francisco and other port cities than to Sacramento and other non-port cities, and greater relief to Sacramento and other points similarly situated than to intermountain territory.

Thereupon Merchants & Manufacturers' Traffic Association of Sacramento and other trade organizations, without prior application to Commission, filed petition in District Court to enjoin Commission's orders and to restrain collection by carriers of rates filed in accordance therewith, in so far as such rates to Sacramento and certain other inland points were higher than to San Francisco and other coastal points. Injunction granted by District Court, one District Judge dissenting, whereupon appeal taken to this court. Judgment of District Court stayed by supersedeas pending determination of this proceeding.

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The District Court, in enjoining the orders of the Commission and the tariffs of carriers filed pursuant thereto, exceeded its authority. It had no jurisdiction in advance of an application to the Commission to entertain a petition filed by organizations admittedly having no financial interest in the controversy. It is submitted that *the decree of the District Court should be reversed and that the cause should be remanded with directions that it be dismissed for want of jurisdiction.*

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1. The first part of the report deals with the general situation of the country and the progress of the work during the year. It is divided into two main sections: the first section deals with the general situation of the country and the progress of the work during the year, and the second section deals with the results of the work during the year.

2. The second part of the report deals with the results of the work during the year. It is divided into two main sections: the first section deals with the results of the work during the year, and the second section deals with the results of the work during the year.

3. The third part of the report deals with the results of the work during the year. It is divided into two main sections: the first section deals with the results of the work during the year, and the second section deals with the results of the work during the year.

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5. The fifth part of the report deals with the results of the work during the year. It is divided into two main sections: the first section deals with the results of the work during the year, and the second section deals with the results of the work during the year.

6. The sixth part of the report deals with the results of the work during the year. It is divided into two main sections: the first section deals with the results of the work during the year, and the second section deals with the results of the work during the year.

7. The seventh part of the report deals with the results of the work during the year. It is divided into two main sections: the first section deals with the results of the work during the year, and the second section deals with the results of the work during the year.

8. The eighth part of the report deals with the results of the work during the year. It is divided into two main sections: the first section deals with the results of the work during the year, and the second section deals with the results of the work during the year.

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10. The tenth part of the report deals with the results of the work during the year. It is divided into two main sections: the first section deals with the results of the work during the year, and the second section deals with the results of the work during the year.

In the Supreme Court of the United States.

OCTOBER TERM, 1916.

UNITED STATES OF AMERICA, INTERSTATE
Commerce Commission, Atchison, To-
peka & Santa Fe Railway Company,
et al., appellants,

v.

MERCHANTS & MANUFACTURERS' TRAFFIC
Association of Sacramento, Traffic Bu-
reau of San Jose Chamber of Commerce,
et al., appellees.

No. 452.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

STATEMENT OF THE CASE.

This is an appeal from a judgment of the United States District Court for the Northern District of California, enjoining the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, in fourth section applications Nos. 205, 342, 343, 344, 350, and 352, in so far as the Commission by said orders had granted to the rail carriers permission to charge for the transportation of westbound transcontinental freight destined to

Sacramento, Stockton, San Jose, and Santa Clara, Cal., greater amounts than are concurrently charged for the like carriage of similar freight to San Francisco and Oakland, Cal., and enjoining in part the tariffs, supplements, and reissues *filed and published by said carriers pursuant to said orders and in effect*. An opinion was filed by Circuit Judge Morrow, concurred in by District Judge Dooling, Record, page 358, District Judge Bledsoe dissenting, Record, page 365. *Merchants' & Mfrs.' Traffic Assn. et al. v. United States et al.*, 231 Fed., 292.

The fourth section of the act as it originally read prohibited carriers under substantially similar circumstances and conditions from charging more for a shorter than for a longer distance over the same line in the same direction, where the shorter was included in the longer distance. Under this section as interpreted by this court the carrier initiated the rate without any action on the part of the Commission. Section 4 was amended June 18, 1910, whereby carriers were prohibited from charging more for a shorter than for a longer distance unless upon application the Commission should authorize the carrier to charge less for a longer than for a shorter distance. The words "under substantially similar circumstances and conditions" appearing in the original fourth section were left out of the amended fourth section. The construction given to the fourth section as amended, however, by this court is that competition which materially affects the rate of

carriage to a particular point is a dissimilar circumstance and condition and warrants the Commission in authorizing a departure from the fourth section whereby the carriers may charge less for a longer haul to a competitive point than for a shorter haul to a noncompetitive point. *Intermountain Rate case*, 234 U. S., 476; *East Tennessee V. & G. Ry. Co. v. I. C. C.*, 181 U. S., 1.

The amendment of 1910 made all existing rates which were higher to intermediate points unlawful, unless approved by the Commission on applications which were required to be filed within six months after the passage of the act.

At the time of the passage of the amendment higher rates to intermediate points were almost as numerous as lower rates. The rate systems of carriers were largely constructed upon the basing-point system. The practical effect of the amendment was to force a readjustment of rate schedules, subject to the Commission's approval.

In February, 1911, the various transcontinental carriers filed with the Commission their applications for relief from the provisions of the fourth section as to rates on commodities from eastern defined territories to Pacific coast terminals and intermediate points. These applications sought authority to continue the then current practice of these carriers of making commodity rates to the Pacific coast lower than to intermediate points. Extensive hearings were held at Washington in

March and April, 1911, at which the carriers presented evidence and argument in favor of their various applications for relief.

In disposing of these applications the Commission divided the United States into five zones, denied to the carriers authority to continue lower rates from points in zone 1 to the Pacific coast than to intermediate points, and authorized the maintenance of higher rates to the intermediate points than to the coast on traffic originating in zones 2, 3, and 4. The carriers filed injunction proceedings in the Commerce Court to set aside the order of the Commission as not being responsive to the applications and beyond the power of the Commission, for the reason, as urged, that the Commission in establishing such zones had exceeded its authority. On November 9, 1911, the Commerce Court set aside the order of the Commission. *Atchison, T. & S. F. Ry. Co. et al. v. United States*, 191 Fed., 856. Upon appeal from that decision this court, on June 22, 1914, reversed the judgment of the Commerce Court. *Intermountain Rate case*, 234 U. S., 476.

In July, 1914, the transcontinental carriers filed with the Commission a supplemental application asking, among other things, that the requirements of the order as to certain commodities, designated for convenience as Schedule C, be extended until January 1, 1915. The carriers also asked for a further hearing concerning the rates on commodities enumerated in Schedule C, alleging that as to such commodities the competitive conditions justified a

greater degree of relief than was afforded under the original order. The Commission, responsive to this application, extended the effective date of the order as to Schedule C until January 1, 1915. A hearing was held at Chicago October 6, 1914, and after full consideration the Commission, under date of January 29, 1915, filed its supplemental report, wherein it was observed, Record, page 298, that:

No evidence has been presented in this case to show that it is necessary to apply the coast terminal rates to any points except the ports of call on the Pacific coast at which the Atlantic-Pacific steamship lines deliver freight. We shall authorize these carriers to establish the rates proposed to these ports upon all the articles in the list, excepting those to which exceptions have been noted.

In its order filed on the same date as the report last cited, Record, pages 323, 327, the Commission maintained the original division of the United States into five zones, known, respectively, as zones 1, 2, 3, 4, and 5, and provided:

That in the observance of this order as to the rates on Schedule C commodities the Pacific coast terminals shall consist of San Diego, Wilmington, East Wilmington, San Pedro, San Francisco, and Oakland, Cal., Portland, Oreg., Tacoma and Seattle, Wash., only.

In the supplemental report the carriers were asked to submit a plan for the construction of rates to intermediate points in what was termed "back-

haul" territory, the Commission having suggested that the rates to these points might be somewhat lower than full combination of local and coast terminal rates.

The carriers submitted such proposed rates, but they were not approved by the Commission, and by an order dated April 30, 1915, the Commission authorized the carriers to construct such rates by adding to terminal rates not more than 75 per cent of the local from terminal to destination. In its report filed on the same date, Record, pages 343-344, the Commission, in this connection, said:

In our former report, *supra*, we said that the terminal rates should be confined to the points at which the Atlantic-Pacific steamship lines deliver their freight. At the time the testimony was taken the Panama Canal had been open but a few weeks, and the record then showed the delivery of this freight only at certain points. Proof has since been offered showing the delivery and receipt of this freight at East San Pedro, Cal.; Astoria, Oreg.; Vancouver, Bellingham, South Bellingham, Everett, Aberdeen, Hoquiam, and Cosmopolis, Wash. The carriers serving these points have conceded that these points are entitled to the same rates as other terminal points. The circumstances and conditions at the points named appear to be similar to those found at the points named as terminals in the former report, and the order will be modified so as to permit the

establishment of the terminal rates proposed to the points above named.

Accordingly, the points last named, being shown to be ports of call for ocean steamships for the delivery and receipt of freight, were included as places to which the carriers might apply terminal rates.

The order of April 30, 1915, was predicated upon the conclusion of the Commission that the competitive justification for authorizing the carriers to give terminal rates was the situation of the city upon the ocean, where ocean-going vessels could call and receive and deliver freight, and that if an additional rail haul from the ocean is necessary in order to make delivery, something should be added to the terminal rates for the transportation to the point of delivery.

Prior to this time a large number of inland cities in California, Washington, and Oregon, including the cities of Sacramento, Stockton, San Jose, and Santa Clara in California, had been given terminal rates by the rail carriers (Record, page 272), and the ocean carriers between the east and west coasts of the United States, in order to meet this competition and thereby to secure tonnage for their ships, were making a practice of absorbing the inland locals to these points from the ports of call. The cities of Sacramento, Stockton, San Jose, Santa Clara, and other cities and towns not situated directly upon the ocean thus secured terminal rates to

which their location did not naturally entitle them. The passage of the Panama Canal act and the opening of the Panama Canal caused the ocean carriers to discontinue absorbing the local rail rates, for by so doing the ocean carriers would have subjected themselves to the application of the act to regulate commerce and to the jurisdiction of the Commission. This the ocean carriers desired to avoid in order that they might change their rates at will and make special contracts at different rates, which they could not do if governed by the act to regulate commerce. The discontinuance of these absorptions by the ocean carriers took away the artificial competitive condition thereby created and placed the points last named in a different situation as to competition than points which are ports of call for ocean steamships.

The Commission, upon complaint of the Santa Rosa Traffic Association, on June 4, 1912, had held that it was an unlawful discrimination against Santa Rosa, an interior point adjacent to the ocean, but not on deep water, for the transcontinental carriers to continue to give terminal rates to Santa Clara and San Jose, two of the complaining cities herein, and not to apply the same rates to Santa Rosa. *Santa Rosa Traffic Association v. Southern Pacific Co. et al.*, 24 I. C. C., 46; 29 I. C. C., 65. The transcontinental carriers, under the order of the Commission, having the option of withdrawing terminal rates from San Jose and Santa Clara or

of extending such rates to Santa Rosa, adopted the former alternative.

Thereupon complaint was made to the Commission by San Jose and Santa Clara that the withdrawal of terminal rates from those interior points and the contemporaneous continuation of such rates to 182 other interior points would subject San Jose and Santa Clara to unjust discrimination. Record, page 266. The Commission in the San Jose case, decided December 29, 1914, after noting the fact that ocean-going vessels actually discharged freight from the Atlantic seaboard at San Francisco, Oakland, San Diego, San Pedro, Wilmington, and East Wilmington, Record, page 271, said:

If the transcontinental carriers, in competition with the ocean lines, see fit to reduce transcontinental commodity rates to these particular points to lower than a normal basis, they can not be charged with unjust discrimination for not extending the same rates to other points not so advantageously situated as not being points of direct contact with Atlantic-Pacific ocean competition.

The Commission concluded the opinion last mentioned with the observation, Record, page 273, that:

The matter of the extension of terminal commodity rates to interior California points is under consideration by the Commission on carriers' Fourth Section Applications Nos. 205, etc., and will be disposed of there.

The applications referred to are the applications out of which arose the orders specifically attacked in this proceeding. The transcontinental carriers, pursuant to those orders, readjusted their rates as to schedule C commodities by the filing of tariffs which went into effect without suspension by the Commission.

The Merchants and Manufacturers' Traffic Association of Sacramento, Traffic Bureau of San Jose Chamber of Commerce, Stockton Traffic Bureau, and the city of Santa Clara thereupon filed a petition in the United States District Court for the Northern District of California against the United States, Interstate Commerce Commission, and the carriers which had made the fourth section applications before the Commission, seeking to enjoin the orders of the Commission and to restrain the carriers from collecting rates in accordance with the tariffs filed by virtue of said orders. The petition alleged that the orders of the Commission authorizing the withdrawal of terminal rates from Sacramento, Stockton, San Jose, and Santa Clara operated to discriminate against the cities named in favor of the cities to which the carriers by said orders were permitted to give terminal rates. This proceeding for an injunction was filed as an original proceeding in court without any prior application to the Commission.

The District Court, in its decree, Record, page 371, enjoined the tariffs which had been filed and

published by the carriers and which were in effect—

* * * in so far as they make or impose a charge for the transportation by rail of westbound transcontinental freight * * * destined to Sacramento, Stockton, San Jose, and Santa Clara, California, greater in amount than is concurrently charged for the like carriage of like freight to San Francisco and Oakland, California. * * * and the enforcement thereof should be enjoined; *and the said tariffs, supplements, and reissues above mentioned in the particulars before stated are hereby canceled and set aside.* [Italics ours.]

The District Court also by its decree, Record, page 371, perpetually enjoined the Interstate Commerce Commission, the Atchison, Topeka & Santa Fe Railway Company, Chicago, Rock Island & Pacific Railway Company, Denver & Rio Grande Railroad Company, Southern Pacific Company, Union Pacific Railroad Company, and Western Pacific Railroad Company—

* * * from enforcing or acting in accord with or under the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, in fourth section applications Nos. 205, 342, 343, 344, 350, and 352, and from enforcing, charging, or collecting freight charges prescribed in the tariffs filed by the rail carriers, respondents herein, under or pursuant to the above-men-

tioned orders of the Interstate Commerce Commission * * * *in so far as said orders, tariffs, supplements, or reissues authorize, make, or impose a charge for the transportation by rail of westbound trans-continental freight * * * destined to Sacramento, Stockton, San Jose, and Santa Clara, California, greater in amount than is concurrently charged for the like carriage of like freight to San Francisco and Oakland, California.* [Italics ours.]

The United States, the Interstate Commerce Commission, and the carriers parties to the suit appealed from the judgment of the District Court, and upon application duly made therefor Mr. Justice McKenna granted an order superseding the judgment and decree of the lower court until this case shall have been heard by this court.

ARGUMENT.

I.

**THE COMMISSION HAD JURISDICTION TO PRESCRIBE THE
EXTENT TO WHICH CARRIERS MIGHT BE RELIEVED
FROM THE OPERATION OF THE FOURTH SECTION.**

(a) *The orders were responsive to the carriers' applications.*

Section 4 of the act to regulate commerce, as amended June 18, 1910, provides that carriers subject to the act may not charge more in the aggregate for a shorter than for a longer haul over the same line and in the same direction where the

shorter is included within the longer distance. It provides further, however:

That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and *the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section.* [Italics ours.]

Prior to the amendment of 1910 carriers were permitted to initiate without authority of the Commission higher rates for shorter than for longer distances. By that amendment, however, the consent of the Commission was made a condition precedent to the lawfulness of such higher rates. It has been heretofore noted that in February, 1911, the various transcontinental carriers filed with the Commission their applications for relief from the provisions of the fourth section as to rates on commodities from eastern defined territories to Pacific coast terminals and intermediate points. These applications were granted in part and denied in part, the Commission establishing zones of influence of competition. After this order of the Commission was sustained in the *Intermountain Rate case*, 234 U. S., 476, the transcontinental carriers in July, 1914, filed with the Commission their application asking that the requirements of the order as to

Schedule C be extended. In accordance with this application there was a hearing concerning the rates on commodities enumerated in Schedule C, and after full consideration the Commission, in the exercise of the authority conferred upon it by section 4—namely, “from time to time [to] prescribe the extent to which such designated common carrier may be relieved from the operation of this section”—made the orders in controversy whereby a greater extent of relief from the provisions of the fourth section was given to carriers as to points accessible to ocean steamships than to cities not so situated.

The majority of the District Court held, Record, page 364, that—

There was, therefore, no application on the part of the carriers, under section 4 of the act to regulate commerce, to be authorized to charge less for a longer (to San Francisco and Oakland) than for a shorter distance (to Sacramento, Stockton, San Jose, and Santa Clara).

The applications of the carriers were to charge more to *intermountain territory* than to San Francisco, Oakland, Sacramento, Stockton, San Jose, Santa Clara, and other Pacific coast cities. The Commission, by reason of the competitive conditions at San Francisco and other cities similarly situated, authorized a greater extent of relief as to such ocean terminals than to Sacramento and other cities not accessible to ocean steamships.

If the Commission in granting relief is confined to the particular relief applied for by the carriers—that is to say, if the Commission upon applications for relief to San Francisco, to Sacramento, and to 100 other places, must grant the exact relief asked for as to all of those places or refuse it as to all—then its power from time to time to prescribe *the extent of the relief* that may be given carriers from the operation of the fourth section is rendered nugatory. If the opinion of the lower court should be sustained, the Commission would become simply a place where applications of carriers might be filed to be automatically granted or refused *in toto*, without any power or discretion on the part of the Commission to prescribe the extent to which relief might be allowed.

The effect of the decision of the District Court is that an application to maintain higher rates to intermountain territory than to San Francisco can not lawfully be granted by the Commission, if thereby the rates to Sacramento and other interior points are made higher than the rates to San Francisco. As no application to charge less to a competitive point can be granted by the Commission without making the rates lower to that point as compared with other points, not so highly competitive, to which the same extent of relief is not given, it is manifest that the power to grant relief to the carriers under the provisions of the fourth section could never be exercised if the doctrine announced

by the District Court should be sustained. It would be demanding the impossible to say that the carriers should include in their applications all the innumerable places that might be affected by the lower rates to a competitive point with respect to which relief is asked.

The District Court treated these applications as referring to rates between San Francisco and Sacramento alone, considering San Francisco as the long haul and Sacramento the short haul, whereas the applications were to charge *more to intermountain territory* than to all these Pacific coast points. The Commission, under the act, had the power to prescribe the extent of relief to each point, and that it did. It gave the carriers relief as to San Francisco and also gave them relief as to Sacramento, Stockton, San Jose, and Santa Clara. The places last mentioned not being similarly situated with respect to competitive conditions as San Francisco, a greater extent of relief was accorded the carriers as to San Francisco and other ocean terminals than to Sacramento and other non-ocean terminals.

While there was no application on the part of the carriers to maintain higher rates to Sacramento than to San Francisco, there was an application to maintain higher rates to intermountain territory than to Sacramento, and there was an application to maintain higher rates to intermountain territory than to San Francisco. The applications of the

carriers were passed upon by the Commission, having in view the competitive conditions at each place with respect to which the carriers asked for relief. The orders made by the Commission were directly responsive to the applications.

(b) *The District Court assumed to have greater rate-making powers than the Commission.*

If it were true, as held by the majority of the court below, that the Commission in granting permission to the carriers to charge more to intermountain territory from the east than to San Francisco, and more to intermountain territory from the east than to Sacramento, had to grant the applications just as made, and that to give greater relief to San Francisco by reason of the greater competition there than at Sacramento would not be responsive to the applications, because the result would be to increase the rates to Sacramento, as compared with San Francisco, *then the like objection could be made to the decree entered by the District Court.* That court in its decree declared that the rates must be the same to Sacramento as to San Francisco, and if this order of the court were sustained the result would be to increase the rates to Colfax, Marysville, and numerous other points as compared with Sacramento. If the Commission had no power to make the orders because the indirect effect might be to increase the rates to Sacramento, as compared with San Francisco, how could the District Court, without any application by the carriers at all, make

an order which would increase the rates to Colfax and other points as compared with Sacramento? The District Court not only assumed administrative functions with regard to rates expressly delegated by law to the Commission, but the District Court assumed to have a greater power than the Commission with respect to rates, for there was no application whatever by any carrier to charge more to Colfax, Marysville, and many other points than to Sacramento. Indeed, the District Court decreed the same transcontinental rates to Sacramento, Santa Clara, Stockton, and San Jose as to San Francisco not only without any application by the carriers but over the objection and protest of the carriers.

(c) *The judgment of the District Court is in direct conflict with the opinion of this court in the Intermountain Rate case, 234 U. S., 476.*

In the *Intermountain Rate case* the claim of the carriers was that the Commission had no power to establish zones of influence of competition or to take into consideration the relative effects of competition at different points. It was urged that the Commission had no power to do more than exercise its general powers concerning the reasonableness of rates at all points. This court, however, upheld the power of the Commission to consider the relative effect of competition in different zones and declared that the power to depart from the

provisions of the fourth section which, before the amendment, had been vested in the carriers, was by the amendment transferred to the Commission. To say that the Commission has no power to consider the relative effect of competition in different zones would be to say that the power "evaporated in the process of transfer" from the carriers to the Commission. This court, through the Chief Justice, in the *Intermountain Rate case*, 234 U. S., 476, 485, said:

* * * it follows that in substance the amendment intrinsically states no new rule or principle, but simply shifts the powers conferred by the section as it originally stood; that is, it takes from the carriers the deposit of public power previously lodged in them and vests it in the Commission as a primary instead of a reviewing function. In other words, the elements of judgment or, so to speak, the system of law by which judgment is to be controlled remains unchanged, but a different tribunal is created for the enforcement of the existing law.

Continuing, at page 491-494, the court said:

The main insistence is that there was no power after recognizing the existence of competition and the right to charge a lesser rate to the competitive point than to intermediate points to do more than fix a reasonable rate to the intermediate points; that is to say, that under the power transferred to it by the section as amended the Commission

was limited to ascertaining the existence of competition and to authorizing the carrier to meet it without any authority to do more than exercise its general powers concerning the reasonableness of rates at all points. But this proposition is directly in conflict with the statute as we have construed it and with the plain purpose and intent manifested by its enactment. To uphold the proposition it would be necessary to *say that the powers which were essential to the vivification and beneficial realization of the authority transferred had evaporated in the process of transfer and hence that the power perished as the result of the act by which it was conferred.* As the prime object of the transfer was to vest the Commission within the scope of the discretion imposed and subject in the nature of things to the limitations arising from the character of the duty exacted and flowing from the other provisions of the act *with authority to consider competitive conditions and their relation to persons and places necessarily there went with the power the right to do that by which alone it could be exerted, and therefore a consideration of the one and the other and the establishment of the basis by percentages was within the power granted.* As will be seen by the order and as we have already said for the purpose of the percentages established zones of influence were adopted *and the percentages fixed as to such zones varied or fluctuated upon the basis of the influence of the competition in the designated areas.* [Italics ours.]

The orders of the Commission here in controversy permitted the carriers to fix rates to Pacific coast terminals lower than to intermediate territory, but required them so to adjust their rates under the orders as to give due effect to the influence of competition in the designated areas. In the *Intermountain Rate case* the question was as to the adjustment of rates with relation to zones of influence of competition at *points of origin*. Here the question is the adjustment of rates with relation to zones of competition at *points of destination*. The question involved in both cases is whether the Commission has power to consider the influence of competition in designated areas and to prescribe the greatest extent of relief where the competition is greatest. We submit that the decision of the lower court can not stand against the doctrine announced by this court in the *Intermountain Rate case*.

(d) *The Commission, of its own motion, may investigate fourth-section matters and make orders in relation thereto.*

Under the fourth section as amended authority from the Commission is a prerequisite to a departure by carriers from the operation of the fourth section. The Commission in granting relief is not confined to the particular relief asked. Indeed, under section 13 of the act the Commission has power to institute an investigation of its own motion into fourth section matters. Section 13 of

the act as amended in 1910, coincident with the amendment of section 4, provides that:

* * * the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made to or before said Commission by any provision of this act, or concerning which any *question* may arise under *any of the provisions of this act*, or relating to the *enforcement of any* of the provisions of this act. And the said Commission shall have the same powers and authority to proceed with *any inquiry instituted on its own motion* as though it had been appealed to by complaint or petition under any of the provisions of this act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. [Italics ours.]

This section gives to the Commission primary and plenary authority to make the orders here in controversy, even if the investigation into the subject matter had been of its own motion instead of on application of the carriers.

The Commission in entering an order is not restricted even in ordinary cases to the precise relief asked for by the pleadings as in an action at law. Much more so is the Commission, in prescribing the

extent of relief from the provisions of the fourth section, not restricted to the precise relief asked by the carrier, for its authority under the fourth section as amended is a "primary instead of a reviewing function."

If Congress had intended that the making of an application for the exact relief to be given to a carrier under the fourth section should be a jurisdictional prerequisite to the granting of relief by the Commission, it would have provided for some notice of the application. District Judge Bledsoe, in his dissenting opinion, in this connection, said, Record, page 368:

The absence of any provision for notice, the empowering of the Commission to afford relief "from time to time," together with the comprehensive phraseology of sections 13 and 15, *supra*, lead me to conclude that the hearing, investigation, and order countenanced by the act are to be had "upon application" of the carrier or on the initiative of the Commission as the circumstances may demand.

(e) *Notice to shippers of carriers' fourth-section applications not prerequisite to validity of Commission's orders.*

The act does not require a carrier in filing rates with the Commission to give notice to any one. Rates so filed with the Commission are published in the manner specified in the act, and such publication constitutes notice to all concerned. The orig-

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inal fourth section required no prior notice of rates filed thereunder and the amended fourth section likewise makes no provision for notice of an application by a carrier for relief from the long-and-short-haul provisions of the act.

An application by a carrier under the fourth section is not a proceeding between the carrier and some designated party to whom notice must be given, but is a proceeding between the carrier and the general public as represented by the Commission. Notice to the public of such an application or of a hearing thereon is no more required than is notice to the public of rates filed by the carrier where no previous consent of the Commission is needed. If all persons who are or may be interested must be notified in order to give the Commission jurisdiction over a fourth-section application, then as to such applications on transcontinental business every shipper in the United States would have to be notified, since all are either actually or potentially shippers of transcontinental traffic.

(f) The tariffs filed by the carriers and accepted by the Commission may be considered as applications.

It appears from the record that the carriers had filed tariffs in accordance with the permission granted by the Commission and that these tariffs had been officially promulgated, and *were in effect at the time of the hearing in the court below*. The carriers made no objection to the orders and the tariffs so filed and accepted by the Commission

might fairly have been considered as applications. Section 15 of the act provides that:

Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, * * *. [Italics ours.]

The case of *United States v. Louisville & Nashville Railroad Company*, 235 U. S., 314, we submit, does not hold, as the lower court assumed, that the relief granted by the carrier must be identical with that asked in the application. This court in that case, at page 322, said:

* * * the right to continue it [departure from fourth section] had been expressly pro-

hibited by statute until on application made to the Commission *its consent to that end was given.* [Italics ours.]

The point considered in that case was the lack of consent of the Commission for the carrier to depart from the fourth section and not the failure to file an application with the Commission. In the case at bar consent was given by the Commission to the carriers to depart from the fourth section, and there is nothing in the decision referred to to sustain the proposition that such consent is invalid unless preceded by a formal application requesting the particular relief granted.

II.

THE DISTRICT COURT HAD NO JURISDICTION TO ANNUL ANY PORTION OF THE ORDERS OF THE COMMISSION AND TO SUBSTITUTE AN ORDER OF ITS OWN FOR THOSE OF THE COMMISSION.

(a) *The District Court, in attempting by its decree to prescribe the extent of relief to carriers under the fourth section, substituted its discretion for that of the Commission.*

The District Court enjoined the orders of the Commission in so far as they permitted the carriers to file and charge lower rates to San Francisco and other ocean terminals than to Sacramento and other points not situated on the ocean. The decree of the District Court in effect, if indeed not in direct terms, constitutes an administrative order *judi-*

cially made that the carriers shall charge no more to Sacramento, Stockton, San Jose, and Santa Clara than to San Francisco and Oakland.

In *United States v. Louisville & Nashville R. Co.*, 235 U. S., 314, this court, at page 320, said:

* * * it plainly results that the court below, in substituting its judgment as to the existence of preference for that of the Commission on the ground that where there was no dispute as to the facts it had a right to do so, obviously exerted an authority not conferred upon it by the statute. It is not disputable that from the beginning the very purpose for which the Commission was created was to bring into existence a body which from its peculiar character would be most fitted to primarily decide whether from facts, disputed or undisputed, in a given case preference or discrimination existed. *East Tenn., etc., Ry. Co. v. Interstate Commerce Commission*, 181 U. S., 1, 23-29. And the amendments by which it came to pass that the findings of the Commission were made not merely *prima facie* but conclusively correct in case of judicial review, except to the extent pointed out in the *Illinois Central* and other cases, *supra*, show the progressive evolution of the legislative purpose and the inevitable conflict which exists between giving that purpose effect and upholding the view of the statute taken by the court below. It can not be otherwise, since if the view of the statute upheld below be

sustained, the Commission would become but a mere instrument for the purpose of taking testimony to be submitted to the courts for their ultimate action.

In *Interstate Commerce Commission v. Louisville & Nashville R. Co.*, 227 U. S., 88, 100, this court observed:

The courts can not settle the conflict, nor put their judgment against that of the rate-making body * * *.

In *Interstate Commerce Commission v. Union Pacific R. Co.*, 222 U. S., 541, 547, this court said:

In determining these mixed questions of law and fact, the court confines itself to the ultimate question as to whether the Commission acted within its power. It will not consider the expediency or wisdom of the order, or whether, on like testimony, it would have made a similar ruling.

In *Baltimore & Ohio R. Co. v. Pitcairn Coal Co.*, 215 U. S., 481, 494, the court said:

In considering section 15 in the case of *Interstate Commerce Commission v. Illinois Central Railroad Co.*, just decided, *ante*, p. 452, it was pointed out that the effect of the section was to cause it to come to pass that courts, in determining whether an order of the Commission should be suspended or enjoined were without power to invade the administrative functions vested in the Commission, and therefore could not set aside an order duly made on a mere exercise of judgment as to its wisdom or expediency.

In *Illinois Central R. Co. et al v. Interstate Commerce Commission*, 206 U. S., 441, the court said:

And the findings of the Commission are made by law *prima facie* true. This court has ascribed to them the strength due to the judgments of a tribunal appointed by law and informed by experience.

In the *Los Angeles Switching Case*, 234 U. S., 294, 314, the court said:

The argument for the petitioners necessarily invites the court to substitute its judgment for that of the Commission upon matters of fact within the Commission's province. This is not the function of the court.

In *Interstate Commerce Commission v. Chicago, Rock Island & Pacific Ry. Co.*, 218 U. S., 88, 103, the court declared:

The outlook of the Commission and its powers must be greater than the interest of the railroads or of that which may affect those interests. It must be as comprehensive as the interest of the whole country. If the problems which are presented to it, therefore, are complex and difficult, the means of solving them are as great and adequate as can be provided. And arguments which point out and assail the imperfection which may appear in the result this court has taken occasion to characterize. "They assail," it was said, "the wisdom of Congress in conferring upon the Commission the power * * * or attack as crude or inexpedient the action of the Commission in the performance of the

administrative functions vested in it, and upon such assumption invoke the exercise of an unwarranted judicial power to correct the assumed evils." *Interstate Commerce Commission v. Illinois Central Railroad Company*, 215 U. S., 452, 478.

In *Interstate Commerce Commission v. Union Pacific R. Co.*, et al., 222 U. S., 541, 550, this court said:

With that sort of evidence before them rate experts of acknowledged ability and fairness and each acting independently of the other may not have reached identically the same conclusion. We do not know whether the results would have been approximately the same. For there is no possibility of solving the question as though it were a mathematical problem to which there could only be one correct answer. Still there was in this mass of facts that out of which experts could have named a rate. The law makes the Commission's findings on such facts conclusive.

The Commission by its orders adjusted trans-continental rates upon the basis of zones of competitive influence. The petitioners representing non-ocean terminal cities in the District Court alleged that the orders of the Commission unjustly discriminated against them. In attempting to adjust rates to competitive conditions so as to insure equality and justice to carriers, shippers, and communities, necessarily some communities may con-

ceive themselves aggrieved by any order which the Commission may enter. Having this in view Congress has vested the Commission with jurisdiction and has provided it with adequate machinery to investigate and to pass upon the facts of any given case and to make such orders as will, in the discretion of the Commission, best subserve the public interest and abate discrimination.

(b) The petitioners, without prior application to the Commission for relief, brought this suit in the District Court, alleging that they were discriminated against by the orders of the Commission.

The fourth section of the act refers exclusively to carriers, and prescribes the manner in which the designated rates are to be made. There is no provision under that section whereby localities claiming to be discriminated against by rates so made may, by going in the first instance to the courts, ask them to adjust rates to competitive conditions and modify or change the orders in which the Commission's sanction of such rates has been expressed.

If the petitioners in the District Court conceived themselves aggrieved by the orders of the Commission, the procedure for redress is provided by section 13 of the act as amended June 18, 1910, as follows:

That any * * * association, or any mercantile * * * or manufacturing society or other organization, or any body politic or municipal organization * * * complaining of anything done or omitted to be done by

any common carrier subject to the provisions of this act, in contravention of the provisions thereof, may apply to said Commission by petition * * *. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

When an order of the Commission affects a community which has not participated in the investigation precedent to such order, that community, under the act to regulate commerce, before appealing to the courts, must go before the Commission and ask for relief. And until such hearing has been had and an order based thereupon has been entered by the Commission, it is not within the province of any court to enter any order in the premises. Congress manifestly did not intend to divide between the Commission and the courts jurisdiction over matters of rates. That would lead to confusion and destroy the uniformity which it was the purpose of the act to bring about.

(c) *Suit can not be brought in the first instance in court for discrimination in rates between communities.*

In Interstate Commerce Commission v. Chicago, Rock Island & Pacific Railway Company (Burn-

ham, Hanna, Munger case), 218 U. S., 88, 110, Mr. Justice McKenna, speaking for the court, said:

The order of the Commission besides is strictly limited. It was intended to determine nothing, and it determines nothing but that the through rates on Atlantic seaboard shipments to the Missouri River cities are too high. That order is alone open to review. Whether other persons, cities, or areas of territory have grounds of complaint, the way is open by application to the Commission for inquiry and remedy. In that inquiry many elements may enter upon which the judgment of the Commission should first pass and of which the courts should not be called upon in advance to intimate an opinion. The reasons for this we have indicated, and they will be found at length in the cases which we have cited.

In *Texas & Pacific Railway Co. v. Abilene Cotton Oil Company*, 204 U. S., 426, 444, it was held that rate-making matters are within the exclusive primary jurisdiction of the Interstate Commerce Commission. The court in that case, speaking through the present Chief Justice, and referring to the cases of *Cincinnati, N. O. & T. P. Ry. Co. v. Interstate Commerce Commission*, 162 U. S., 184; *Louisville & Nashville R. Co. v. Behlmer*, 175 U. S., 648; and *Interstate Commerce Commission v. Louisville & Nashville R. Co.*, 190 U. S., 273, said:

It was pointed out that by the effect of the act to regulate commerce it was peculiarly

within the province of the Commission to primarily consider and pass upon a controversy concerning the unreasonableness *per se* of the rates fixed in an established schedule. It was therefore declared to be the duty of the courts, where the Commission had not considered such a disputed question, to remand the case to the Commission to enable it to perform that duty, a conclusion wholly incompatible with the conception that courts, in independent proceedings, were empowered by the act to regulate commerce, equally with the Commission, primarily to determine the reasonableness of rates in force through an established schedule.

The following decisions of this court also illustrate the particularity with which this tribunal has safeguarded the primary jurisdiction of the Commission to pass upon rate matters.

In *Continental Wall Paper Company v. Voight & Sons Company*, 212 U. S., 227, 274, the court said:

Something of the same idea of the exclusiveness of a statutory remedy finds expression in [the *Abilene case*] * * * in which it was held that a carrier could not maintain an action at common law for excessive and unreasonable freight charges exacted on interstate shipments where the rates charged were those which had been duly fixed by the carrier according to the interstate commerce act and had not been found to be unreasonable by the Interstate Commerce Commission, * * *.

In *Interstate Commerce Commission v. Chicago, R. I. & P. Ry. Co.*, 218 U. S., 88, 110, the court said:

We have also said that the primary jurisdiction is with the Commission, the power of the courts being that of review, and is confined in that review to questions of constitutional power and all pertinent questions as to whether the action of the Commission is within the scope of the delegated authority under which it purports to have been made.

In *Procter & Gamble v. United States*, 225 U. S., 282, 297, the court held:

On the contrary, by a long line of decisions * * * it appears by the reasoning indulged in that it was never considered that there was power in the courts as an original question, without previous affirmative action by the Commission, to deal with what might be termed in a broad sense the administrative features of the act to regulate commerce by determining as an original question that there had been a compliance or noncompliance with the provisions of the act.

In *Baltimore & O. R. Co. v. Pitcairn Coal Co.*, 215 U. S., 481, 493, 494-495, this court, through the present Chief Justice, said:

* * * we see no escape from the conclusion that the grievances complained of were primarily within the administrative competency of the Interstate Commerce Commission and not subject to be judicially enforced, at least until that body, clothed by

the statute with authority on the subject, had been afforded by a complaint made to it the opportunity to exert its administrative functions. * * * these amendments [of 1906] add to the cogency of the reasoning which led to the conclusion in the *Abilene case*, that the primary interference of the courts with the administrative functions of the Commission was wholly incompatible with the act to regulate commerce. This result is easily illustrated. A particular regulation of a carrier engaged in interstate commerce is assailed in the courts as unjustly preferential and discriminatory. Upon the facts found the complaint is declared to be well founded. The administrative powers of the Commission are invoked concerning a regulation of like character upon a similar complaint. The Commission finds from the evidence before it that the regulation is not unjustly discriminatory. Which would prevail? If both, *then discrimination and preference would result from the very prevalence of the two methods of procedure*. If, on the contrary, the Commission was bound to follow the previous action of the courts, then it is apparent that its power to perform its administrative functions would be curtailed, if not destroyed. [Italics ours.]

The evils pointed out by the Chief Justice in the case just cited have resulted in this case from the attempt of the District Court to make an order of its own regarding rates. The District Court en-

joined the orders of the Commission in so far as they permitted the carriers to charge higher rates to Sacramento, Stockton, San Jose, and Santa Clara than to San Francisco and Oakland, and enjoined the carriers from collecting tariff rates, which had been filed in accordance with the orders of the Commission, which were in effect at the time of the decree, to Sacramento, Stockton, San Jose, and Santa Clara and which were higher than to San Francisco and Oakland. There are more than 180 other cities and towns in California just as much entitled as Sacramento, Stockton, San Jose, and Santa Clara to the same rates as San Francisco. The District Court, in ordering the application of San Francisco rates to Sacramento, Stockton, San Jose, and Santa Clara, created a discrimination against all the other cities and towns in California similarly situated with Sacramento, Stockton, San Jose, and Santa Clara, which other cities and towns do not enjoy the same rates as San Francisco.

If the decree of the District Court should be sustained, many of those points, it may be assumed, would file their petitions before the District Court, claiming that they are similarly situated with Sacramento, Stockton, San Jose, and Santa Clara and are entitled to the same rates as San Francisco; and the District Court would have just as much power to order that such cities be given the same rates at Sacramento, Stockton, San Jose, and Santa Clara as it had to order that Sacramento, Stockton, San Jose, and Santa Clara be

given the same rates as San Francisco. Then other cities and towns might go before the Commission, where they should properly go, in applying for adjustment of rate matters. We should then have the Commission considering in certain cases the very rate matters being considered by the District Court in other cases. The District Court might decide one way and the Commission might decide another way. Which would prevail?

The petitioners in the District Court had the right under section 13 of the act to file with the Commission as an original matter a petition setting forth the facts in relation to the discrimination alleged to have resulted from the orders in question. This right petitioners in the District Court still have, but until they shall have availed themselves of the privilege and have applied to the Commission for redress of any wrong which they claim to have suffered, it is manifest that they had no lawful authority to ask the District Court to annul the orders of the Commission which they claimed subjected them to discrimination and to ask the court to make an order with respect to rates different from those which the Commission had made.

(d) Petitioners at the same time are claiming under and against the orders of the Commission.

Sacramento, Stockton, San Jose, and Santa Clara, by reason of the orders of the Commission

here in controversy, secure lower rates from the east than the carriers give to intermountain territory. If the orders of the Commission had been annulled entirely, these points would have to pay higher rates than Reno, Salt Lake City, and other points to the eastward, whereas by reason of the orders which they assail these cities have lower rates than Salt Lake City, Reno, and other eastward points. Sacramento, Stockton, San Jose, and Santa Clara are therefore claiming under the orders to the extent that such orders give them lower rates than to intermountain territory and against the orders to the extent that under the orders the rates to these places are not as low as to San Francisco and other ocean terminals. May a city at the same time claim under and against an order of the Commission?

(e) *The lower court erroneously suspended in part the orders of the Commission because they did not include certain cities.*

The District Court by its decree required that Sacramento, Stockton, San Jose, and Santa Clara, non-ocean terminal points, be given the same rates as San Francisco, an ocean terminal, which order the Commission had not made, and annulled in part the orders which the Commission had made, because the Commission in its orders did not include as terminal points the cities above named. The decree of the lower court challenged as invalid not

what the Commission had done but what it had not done. The power of the District Court was confined to passing upon the validity of the orders actually made, and it had no warrant of law to go beyond that. This proposition is concluded by the decision of this court in *Procter & Gamble v. United States*, 225 U. S., 282. Appellant in that proceeding had complained to the Commission with respect to certain demurrage regulations applied by certain carriers to its private cars and had charged that such regulations were unjust and discriminatory and in contravention of the law. The Commission, after hearing, concluded that the rules in question were consistent with the act and declined to direct their cancelation. The company thereupon sought to have the Commerce Court annul the action or nonaction of the Commission whereby its application for relief had been denied, but the Commerce Court, having assumed jurisdiction of the case, dismissed the petition *on its merits*. On appeal to this court it was held that the Commerce Court had erred in assuming jurisdiction of the cause, which was thereupon remanded to that court to be dismissed *for want of jurisdiction*. This court, at pages 296, 297, said:

In the long interval which intervened between 1887, when the act to regulate commerce was enacted, and June 18, 1910, when the Commerce Court act was passed, *we have learned of no instance where it was held or even seriously asserted that as to subjects*

which in their nature were administrative and within the competency of the Commission to decide there was power in a court, by an exercise of original action, to enforce its conceptions as to the meaning of the act to regulate commerce by dealing directly with the subject irrespective of any prior affirmative command or action by the Interstate Commerce Commission. [Italics ours.]

(f) *The lower court exceeded its authority in attempting to enjoin the carriers from collecting rates which had been filed and published in accordance with the act to regulate commerce.*

Tariffs having been filed and published by the carriers as permitted by the orders, the rates so provided were, for the purposes of this hearing, no different from other rates which might have been published without any order by the Commission, or from other rates already in effect on the lines of the interested carriers. Certainly it would not be suggested that the District Court would have had power in *advance of a finding by the Commission* to suspend the operation of such rates already published and in effect. And it is equally apparent that the lower court was without authority to suspend any of the rates formally published and in effect in obedience to the orders here involved.

Section 1 of the Elkins Act provides as to published rates:

Whenever any carrier files with the Interstate Commerce Commission or publishes a

particular rate under the provisions of the act to regulate commerce * * * that rate as against such carrier, its officers or agents, in any prosecution begun under this act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of the act.

In the case of *Dayton Coal & Iron Co. v. C. N. O. & T. P. Ry. Co.*, 239 U. S., 446, 451, this court, through Mr. Justice Day, declared:

That it is essential to the maintenance of uniform rates and the avoidance of rebates and preferential treatment that the tariff rates filed with the Commission according to the interstate commerce act, while in force, *shall be the only rates which the carrier may lawfully receive or the shipper properly pay* is too thoroughly settled by the former decisions of this court to require further discussion. [Italics ours.]

Under section 6 of the act to regulate commerce a carrier can change published rates only on 30 days' notice. The Commission may suspend proposed rates if they are found to be unreasonable or discriminatory, but the carriers themselves have no power to change such rates except upon 30 days' notice. Here we have the carriers filing and publishing rates in accordance with the authority of the Commission, and, while those rates are in effect, the

District Court attempts to enjoin the carriers from collecting those rates and orders the carriers to collect no higher rates than the *rates named by the court*.

If the carriers should obey the decree of the District Court they would be violating the act to regulate commerce and would incur the penalties for collecting other than published rates. Section 6 of the act provides that—

No carrier, unless otherwise provided by this act, shall engage or participate in the transportation of passengers or property, as defined in this act, unless the rates, fares, and charges upon which the same are transported by said carrier have been *filed and published in accordance with the provisions of this act*; * * *.

If, therefore, the decree of the lower court should have enjoined the carriers from collecting the rates which they had filed and published in accordance with the orders of the Commission, the result would have been that the carriers would have had no legal rates at all and traffic would have been paralyzed. The decree of the lower court would have brought about chaos in the transcontinental rate situation had not supersedeas from this court issued whereby the decree of the District Court was suspended until this case could be heard by this court. It would be difficult to imagine a more striking illustration of the evils and confusion resulting from the primary interference by courts in rate-

making questions than that created by the decree here under consideration.

In *Tennessee Central Railroad Company v. Southern Ry. Co.*, 178 Fed., 267, the Circuit Court of Appeals for the Fourth Circuit declared:

We find that the court below was without jurisdiction to entertain appellant's bill, for the reason that the facts and circumstances set forth in it show that the Interstate Commerce Commission has exclusive cognizance of the controversy referred to and described therein. The citizenship of the parties is of the character required by the statutes, and the amount in controversy is sufficient to give the court below jurisdiction, but the subject matter of the bill has been for good and sufficient cause—as has been demonstrated by frequent decisions of the courts—committed to the Interstate Commerce Commission for its consideration and disposition.

In *Thacker Coal & Coke Co. v. Norfolk & Western Railway Co.*, 68 S. E. Rep., 107, 108, the Supreme Court of Appeals of West Virginia said:

We see that there is nothing more distinctly committed to the jurisdiction of this tribunal than the matter of rates—the schedule of rates. This schedule must go at once to this Commission, the only authority to deal with it, at least in the first instance, if the act is obeyed; a tribunal created by Congress under its exclusive power over interstate commerce and given a subject matter

for its action. Yet a state court is asked to grant a perpetual injunction to debar a great interstate railroad from fixing rates and filing them with the Commission. A state court is asked to say that this schedule shall never reach that Commission. It does seem to me that the very statement of the proposition is its own refutation.

In *Columbus Iron & Steel Co. v. Kanawha & M. Ry. Co.*, 171 Fed., 713, 720, an action by a shipper to enjoin the filing with the Interstate Commerce Commission of a proposed schedule of rates on coal, District Judge Keller, holding that a court had no power to issue an injunction in such a case, said:

I can not conceive of a case in which the action of a court could exert a wider or more far-reaching effect in the way of invading the province of the Commission or be more repugnant to the general scope and purposes of the act than by issuing its injunction to prevent the filing of a schedule of rates with that body.

(g) Whether competition is of sufficient potentiality to justify a departure from the operation of the fourth section, and the extent of the relief, if any, which may be granted by reason of such competition, are administrative questions committed to the discretion of the Commission and upon which the findings of the Commission based upon substantial evidence are conclusive.

In *Loomis et al. v. Lehigh Valley R. Co.*, 240 U. S., 43, this court, through Mr. Justice McReynolds, at page 50, said:

An adequate consideration of the present controversy would require acquaintance with many intricate facts of transportation. * * * In the last analysis the instant cause presents a problem which directly concerns rate making and is peculiarly administrative. *Atchison, Topeka & Santa Fe Ry. Co. v. United States*, 232 U. S., 199, 220. And the preservation of uniformity and prevention of discrimination render essential some appropriate ruling by the Interstate Commerce Commission before it may be submitted to a court. See *Penna. R. Co. v. Puritan Coal Co.*, [237 U. S., 121] *supra*, pp. 128, 129; *Penna. R. Co. v. Clark Coal Co.*, [238 U. S., 456] *supra*, pp. 469, 470.

If in respect of interstate business the courts of New York may determine, as original matters, rate-making problems, those in other States have like jurisdiction. The uncertainty and confusion which would necessarily result is manifest. Ample authority has been given the Commission in circumstances like those here shown to administer proper relief and in connection therewith to approve some general rule of action. In so doing it would effectuate the great purpose for which the statute was enacted.

In *United States v. Pacific & Arctic Co.*, 228 U. S., 87, 108, this court declared:

The purpose of the interstate commerce act to establish a tribunal to determine the relation of communities, shippers, and carriers and their respective rights and obligations dependent upon the act has been demonstrated by the cited cases, and also the sufficiency of its powers to deal with the circumstances set forth in the indictment.

In the case of *Robinson v. Baltimore & O. R. Co.*, 222 U. S., 506, 511, Mr. Justice Van Devanter, speaking for the court, said:

It is true, as was urged in argument, that in that [*Abilene*] case the complaint against the established rate was that it was unreasonable, while here the complaint is that the rate was unjustly discriminatory. But the distinction is not material. The power of the Commission over the two complaints is the same, one is as likely to become the subject of diverging opinions and conflicting decisions as is the other; and if a court, acting originally upon either, were to sustain it and award reparation, the confusing anomaly would be presented of a rate being adjudged to be violative of the prescribed standards and yet continuing to be the legal rate, obligatory upon both carrier and shipper.

In *Mitchell Coal Co. v. Pennsylvania R. Co.*, 230 U. S., 247, 257, 258, this court held:

But where the suit is based upon unreasonable charges or unreasonable practices there

is no law fixing what is unreasonable, and therefore prohibited. *In such cases the whole scope of the statute shows that it was intended that the Commission and not the courts should pass upon that administrative question. When such order is made it is as though the law for that particular practice had been fixed, and the courts could then apply that order, not to one case, but to every case, thereby giving every shipper equal rights and preserving uniformity of practice.* * * * Such orders, so far as they are administrative, are conclusive. [Italics ours.]

In Pennsylvania R. Co. v. International Coal Co., 230 U. S., 184, 196, this court said:

Under the statute there are many acts of the carrier which are lawful or unlawful according as they are reasonable or unreasonable, just or unjust. The determination of such issues involves a comparison of rate with service and calls for an exercise of the discretion of the administrative and rate-regulating body, for the reasonableness of rates and *the permissible discrimination based upon difference in conditions are not matters of law.* So far as the determination depends upon facts, no jurisdiction to pass upon the administrative questions involved has been conferred upon the courts. That power has been vested in a single body, so as to secure uniformity and to prevent the varying and sometimes conflicting results that would flow from the different views of the

same facts that might be taken by different tribunals. [Italics ours.]

In *Illinois Central R. Co. et al. v. Interstate Commerce Commission*, 206 U. S., 441, 460, this court quoted from an English case as follows:

* * * and if this court once attempts the hopeless task of dealing with questions of this kind with any approach to mathematical accuracy, and tries to introduce a precision which is unattainable in commercial and practical matters, it would do infinite mischief and no good.

In *Interstate Commerce Commission v. Illinois Central R. Co.*, 215 U. S., 452, 470, this court said:

* * * it is equally plain that such perennial [judicial] powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order upon our conception as to whether the administrative power has been wisely exercised.

In the *Precooling case*, 232 U. S., 199, the carrier assailed the order of the Commission because it only allowed the carrier \$7.50 per car for icing, and the carrier claimed it should have been allowed \$62.50 per car. The court, at page 221, speaking through Mr. Justice Lamar, said:

All these are matters committed to the decision of the administrative body, which, in

each instance, is required to fix reasonable rates and establish reasonable practices. *The courts have not been vested with any such power. They can not make rates. They can not interfere with rates fixed or practices established by the Commission unless it is made plainly to appear that those ordered are void.* [Italics ours.]

We respectfully submit that the District Court erred in attempting by injunction to change the order of the Commission and to make an order of its own as to rates.

III.

CONFISCATION CAN NOT BE PREDICATED ON INCREASED RATES IF SUCH INCREASED RATES ARE REASONABLE.

The petitioners in the court below claimed confiscation not of their property but of the property of shippers not parties to the suit, if Sacramento, San Jose, Santa Clara, and Stockton should not be given the same transcontinental rates as San Francisco and Oakland. In the first place, the allegation of confiscation is too vague and uncertain to be the foundation of judicial action. Furthermore, confiscation can not be predicated on increased rates if the increased rates are reasonable. If confiscation could be claimed because of increased railroad rates where the increased rates are reasonable, then it would not be possible for railroad carriers ever to increase their rates. Shippers have

no vested rights in railroad rates. Their only right is to a reasonable rate.

In *Galveston C. & N. P. R. Co. v. Railroad Commission of Texas et al.*, 137 S. W., 737, 747, the Court of Civil Appeals of Texas said:

It is further urged by appellees that to change the present system of basing rates on Houston would be an interference with the vested rights of the business men of that city, inasmuch as this system has prevailed for such a great length of time, and they have invested a great deal of money on the faith of its continuance. This would be a very strong argument against any change in rates so as to unjustly discriminate against Houston; but it is not a sound argument in favor of the maintenance of a rate, if any such there be, that unjustly discriminates against Galveston. The doctrine of vested rights can have but a limited application in governmental regulations.

In the *Willamette Valley case*, 219 U. S., 433, it appeared that the Southern Pacific Company had in force for many years rates under which numerous lumber mills had been constructed along the line of that railroad. The Southern Pacific proposed to increase its rates, and it was conceded that the proposed increased rates were reasonable. It was also claimed that the lumber interests had expended large sums of money in reliance upon the rates in effect, and that by this circumstance the carrier was estopped from increasing the rates, although the

increased rates might not be unreasonable. This court held that this view was erroneous. The only thing to be considered, said this court, is the reasonableness of the increased rates.

IV.

PETITIONERS FILING COMPLAINT IN THE DISTRICT COURT HAD NO SUCH INTEREST IN THE PROPERTY AFFECTED BY THE ORDERS IN CONTROVERSY AS ENTITLED THEM TO MAINTAIN THIS SUIT.

It should be noted that the allegation of confiscation is made in the petition filed in the court below not by shippers but by trade bodies and traffic associations which, so far as the petition shows, have no financial interest whatever in this controversy, but which allege that the property of citizens of certain towns and cities will be confiscated if the carriers are permitted to charge the rates allowed in the Commission's order.

Even if confiscation could be predicated on increased rates where the increased rates are reasonable, the complaint of confiscation would have to be made by some person or organization whose property would be confiscated, and not by trade organizations and cities which do not claim to have any property to be confiscated and which have no standing in court to make a complaint of that character.

A suit for injunction can not be maintained by any person or any organization unless that person or organization has a financial interest in the subject matter of the litigation. The only interest about

which a party can be heard to complain in a judicial tribunal is one which directly affects some legal or equitable right.

In *Mayor, etc., of Georgetown, v. The Alexandria Canal Co. et al.*, 12 Pet., 91, 99, a suit was brought by the municipal corporation of Georgetown, D. C., to enjoin the construction of an aqueduct across the Potomac River, a part of which was within the corporate limits of that city. There was no showing that the municipal corporation had any property right affected or damaged, but it was stated that the suit was brought by the corporation in its representative capacity to protect the interest of its citizens. This court, holding that the mere general interest which a city may have in its citizens, or which one citizen may have in his city, is insufficient, and that there must be some direct financial interest which is affected in order to constitute the foundation of a suit in equity, said:

There are, indeed, cases in which it is competent for some persons to come into a court of equity, as plaintiffs for themselves and others having similar interests; such is the familiar example of what is called a creditor's bill. But in that, and all other cases of a like kind, the persons, who by name bring the suit and constitute the parties on the record, have themselves an interest in the subject matter which enables them to sue, and the others are treated as a kind of co-plaintiffs with those named, although they themselves are not named: but in this case

it has been already said that the appellants have no such interest as enables them to sue in their own name, and consequently the whole analogy fails.

In *Board of Trade v. Christie Grain & Stock Company*, 198 U. S., 236, the Chicago Board of Trade brought suit against the Christie Grain Co. to enjoin the latter from using the market quotations obtained and used without authority of the board of trade. This court held that the board of trade had a property interest in these quotations, and therefore could maintain the suit.

In the *Ellerman case*, 105 U. S., 166, 173-174, the city of New Orleans had assigned to one Ellerman its right to build levees and wharves on the Mississippi River. The General Assembly of the State granted to a railroad company the right to maintain a wharf at a specified point for its own use, and exempted it from the supervision and control which the municipal authorities exercised in the matter of public wharves. Ellerman brought suit in the United States Circuit Court for the District of Louisiana to enjoin the construction of the railroad wharves. Upon the question of "*interest*" he claimed that the competition *would affect his revenues*. This court, speaking through Mr. Justice Matthews, said:

The sole remaining question then is, whether Ellerman, as assignee of the city, has any legal *interest which entitles him to enjoin the company from using its wharf as*

a public wharf beyond the limits of such use, as defined by that construction of the joint resolution. If he has such interest, *it can only consist in preventing competition with himself* as a wharfinger, which such more extensive use of the railroad property would create. * * * *The legal interest which qualifies a complainant other than the State itself* to sue in such a case is a pecuniary interest in preventing the defendant from doing an act where the injury alleged flows from its quality and character as a breach of some legal or equitable duty. * * * *The only injury* of which he can be heard in a judicial tribunal to complain is the invasion of some legal or equitable right. If he asserts that the competition of the railroad company damages him, the answer is, that it does not abridge or impair any such right. [Italics ours.]

The interest of a community in a rate does not vest in that community the right to maintain an injunction suit. The orders of the Commission did not operate to diminish the value of any property owned by the petitioners.

Under section 13 of the act any organization or any city, without a showing of financial interest, has a right to bring a proceeding before the Commission, but it does not follow that an injunction suit could be maintained in a court without some such interest as a basis. The right to intervene is one thing—that is, the right to be heard in a suit insti-

tuted by another—but the right to *bring suit* is a different proposition. There is no provision of law anywhere that gives any organization or city the right to sue in a representative capacity. The suit filed in the District Court, so far as interest is concerned, might just as well have been brought by the Chicago Board of Trade or the Boston Board of Trade or by any other organization as by these voluntary associations, which do not claim to have any financial interest in the controversy.

V.

THE CHANGED CONDITIONS OTHER THAN THE ELIMINATION OF WATER COMPETITION REFERRED TO IN SECTION 4 HAVE NO APPLICATION TO THE CASE AT BAR.

Petitioners in the District Court urged that where, under section 4, rates have been reduced by a carrier they may not be increased except for some reason other than the elimination of water competition. This point was made before the Commission and considered in *San Jose Chamber of Commerce et al. v. Atchison, T. & S. F. Ry. Co. et al.*, 32 I. C. C., 449, 453. The Commission in that case said:

But even if it be conceded that these three points were given terminal rates by the rail carriers as result of direct competition by the water carriers, this amendment can not be applied to them, as they were given terminal rates by rail many years prior to the passage of the amendment or even the origi-

nal act to regulate commerce. The amendment was passed in June, 1910, and by its express terms applies only to rates thereafter reduced to meet water competition. The condition precedent to the application of the provision against allowing the rail rates to be increased is "whenever a carrier by rail *shall*, in competition with a water route or routes, *reduce* the rates," not whenever a carrier by rail *has*, in competition with a water route, *reduced* the rates. *West-bound Lake-and-Rail Knit Goods Commodity Rates*, 32 I. C. C., 54. The Commission, however, found in the *Intermountain Fourth Section cases, supra*, that "because of railroad competition the steamship lines which reach San Francisco now give these cities (interior cities) the same rates as are given to San Francisco."

Furthermore, it should be noted that the complaint of Sacramento, Stockton, San Jose, and Santa Clara is not that transcontinental rates have been increased as to them, but that the Commission has granted the carriers permission to apply lower rates from the east to San Francisco and cities situated on the ocean than to these non-ocean terminal cities. This is an advantage to which San Francisco, Oakland, and other Pacific coast points situated directly upon the ocean are entitled. The disadvantage of Sacramento as compared to San Francisco is by reason of the location of Sacramento away from the ocean.

Disadvantages in rates due to disadvantageous location do not constitute an undue prejudice or an undue discrimination, either in fact or in law. *Lighterage case, United States v. Baltimore & O. R. Co.*, 231 U. S., 274.

It is not the province of the Commission to equalize by rate adjustment dissimilar conditions due to location. *Page Milling Company v. Norfolk & W. R. R. Co.*, 30 I. C. C., 605, 612; *Railroad Commissioners v. Atchison, T. & S. F. Ry. Co.*, 22 I. C. C., 407, 410; *Wichita Business Association v. Atchison, T. & S. F. Ry. Co.*, 30 I. C. C., 45, 55. The act to regulate commerce does not attempt to equalize fortunes, opportunities, or abilities. *Interstate Commerce Commission v. Diffenbaugh*, 222 U. S., 42, 46; *Southern Pacific Co. v. Interstate Commerce Commission*, 219 U. S., 433.

Assuming, however, that the effect of the rates filed by the carriers under the order of the Commission is to increase rates to Sacramento, San Jose, Santa Clara, and Stockton, there is nothing in the act to regulate commerce which prohibits this. The Commission found in this case changed conditions other than the elimination of water competition. In fact, this readjustment of rates was brought about by one of the greatest changes in traffic conditions which the world has ever known—the opening of the Panama Canal. In the next place, this provision of section 4 that rates decreased by reason of water competition can not be increased except for

some reason other than the elimination of water competition refers to cases where rail carriers, through the reduction of their rates eliminate water competition. They can not thereafter increase their rates unless the Commission finds that the proposed increase rests upon changed conditions other than the elimination of water competition. There is no such situation here as that contemplated. Here we are considering the cases of a number of towns which had secured terminal rates to which their location did not naturally entitle them. The discontinuance of the absorption by the ocean carriers of the inland locals took away the artificial competitive conditions thereby created and placed these points in a different situation as to competition than points situated directly on the ocean.

VI.

NO BETTER ADJUSTMENT OF THE TRANSCONTINENTAL RATE PROBLEM CAN BE DEvised THAN THAT PRESCRIBED BY THE COMMISSION WHEREBY THE GREATEST RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION IS AFFORDED TO POINTS WHERE COMPETITION IS GREATEST, THAT IS, AT OCEAN TERMINALS.

Under the orders of the Commission Sacramento secures a lower rate than Salt Lake City, because Sacramento is nearer to the ocean competition at San Francisco than Salt Lake City, and to that extent is entitled to the advantage of its location. While its location is more advantageous for rate purposes than that of Salt Lake City, it is not so

advantageously situated as San Francisco, which is directly on the ocean. Therefore the competitive conditions at San Francisco justify lower rates than to Sacramento, just as the situation of Sacramento justifies lower rates than to Salt Lake City, which latter involves a shorter haul, but at which place competitive conditions do not exist to the extent to which they exist at Sacramento. The Commission in the administration of the act has applied the rule for the determination of what cities should have the lowest transcontinental rates, and in accordance with the principles considered by the Commission to be just, such rates have been restricted to points of direct ocean competition. As to interior cities, the rates are the rates to ocean terminals plus three-fourths of the local back-hauls until the maximum rate is met. This gives each city the benefit of its location. A city 10 miles from the ocean terminal would have a lower rate than a city 20 miles; a city 20 miles a lower rate than a city 30 miles, and so on. That may not be a perfect system, but it recognizes competitive conditions, and the extent of the relief from the operation of the fourth section under this plan goes hand in hand with the rise and decline of the influence of competition.

CONCLUSION.

It is respectfully urged that compliance with the prayer of the petition filed in the District Court was beyond the jurisdiction of that court for the

reason that it had no power to suspend the orders of the Commission in so far as they permitted the carriers a greater extent of relief to San Francisco than to Sacramento. The District Court exceeded its authority in enjoining the carriers from collecting the tariffs filed and published and in effect in accordance with the orders of the Commission. An injunction restraining a carrier from collecting its published rates is an injunction leveled at the act to regulate commerce and should not stand.

The power to prescribe the extent of relief to carriers under the fourth section of the act is vested in the Commission as a primary function and not in the courts. The District Court had no jurisdiction to entertain a petition such as that here under consideration, filed without prior resort to the Commission by organizations admittedly having no financial interest in the matter in controversy.

We ask that the decree of the District Court be reversed and that this cause be remanded to that court with directions that it be *dismissed for want of jurisdiction*.

Respectfully submitted,

JOSEPH W. FOLK,
*Counsel for the
Interstate Commerce Commission.*

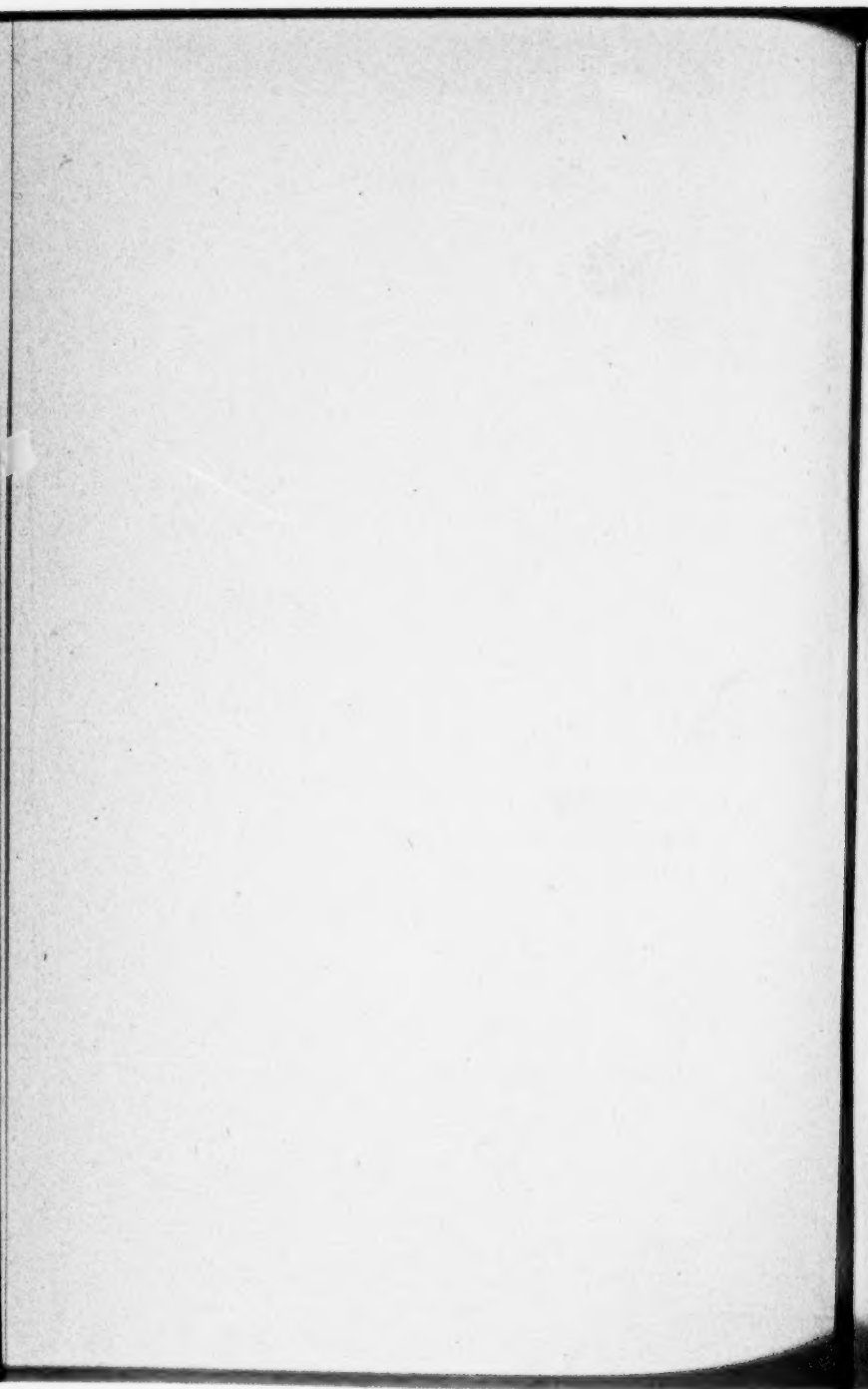
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In the Supreme Court

OF THE
United States

OCTOBER TERM, 1916

No. 452

THE UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, ATCHISON, TOPEKA
& SANTA FE RAILWAY COMPANY, CHICAGO,
ROCK ISLAND & PACIFIC RAILWAY COMPANY,
DENVER & RIO GRANDE RAILROAD COMPANY,
SOUTHERN PACIFIC COMPANY, UNION PA-
CIFIC RAILROAD COMPANY and WESTERN
PACIFIC RAILROAD COMPANY,

Appellants,

vs.

MERCHANTS' AND MANUFACTURERS' TRAFFIC
ASSOCIATION OF SACRAMENTO, TRAFFIC BU-
REAU OF SAN JOSE CHAMBER OF COMMERCE,
STOCKTON TRAFFIC BUREAU and CITY OF
SANTA CLARA,

Respondents.

BRIEF FOR RESPONDENTS.

The Facts.

Description of Respondents.

Respondents herein, petitioners in the lower court, other than the City of Santa Clara, were and

are duly organized associations with memberships composed of the principal merchants, mercantile firms, manufacturing concerns, wholesale companies, jobbers, business men and dealers in their respective communities. The members of said associations, as well as the associations themselves, have directly suffered irreparable loss and injury by reason of the aforesaid orders of the Interstate Commerce Commission and of the tariffs filed by the rail carriers pursuant thereto.

The City of Santa Clara is a duly organized and existing body politic, with all the rights and privileges of such an organization, and has suffered like loss and injury.

Irreparable Damage Suffered by Respondents.

Prior to the institution of the suit in the court below, the rail carriers, because of competition with water carriers, had reduced the rates on east-bound and west-bound trans-continental freight destined to Sacramento, Stockton, San Jose and Santa Clara and had established them as terminal points, with the same rates on freight to and from the East as were charged to and from San Francisco and Oakland. These four cities are and have been manufacturing and jobbing communities, producing and selling articles of commerce in competition with San Francisco and Oakland. Manufacturers and dealers in the four cities first named come into active competition with those in a like line of trade located at San Francisco and Oakland and com-

pete with them for business in intervening territory.

Prior to the orders of the Commission herein complained of and the tariffs filed pursuant thereto, these four cities had enjoyed equal rates with San Francisco and Oakland, had built up large and flourishing industries by reason thereof and were able to compete in common territory. The reason for the enjoyment of such equal rates was because the four cities received the benefit directly of water competition by reason of transportation from San Francisco by bay craft and river boats and the absorption by the water carriers of the local haul.

Increase of Rates.

The tariff filed by the rail carriers pursuant to the orders of the Commission, Supplement 16 to T. C. F. B. W. B. Tariff 1-N, covered two classes of commodity freight designated as Schedule "B" and Schedule "C" commodities.

As to Schedule "B" commodities, the rates were increased to the full extent of the back haul charge from San Francisco to the four cities involved herein, the rates to San Francisco not having been lowered.

As to Schedule "C" commodities, the rates were, to an extent, lowered to San Francisco and Oakland but were increased to the four cities involved herein to the extent of seventy-five per cent of the back haul charge from San Francisco, thus, in many

instances, imposing a higher rate to these four cities than had theretofore been charged, although the rate to San Francisco and Oakland had been lowered in some instances.

The attention of the court is respectfully called to Supplement 16 to West-Bound Tariff No. 1-N, Circular 16-J and Supplement No. 1 thereto, filed by the rail carriers pursuant to the aforesaid orders of the Commission. These tariffs show the increase in freight charges to the four cities. As before stated, these four points had always been "terminals" and had received the advantage of the same rates as had San Francisco. In Supplement 16, above referred to, we will point out the following pages showing the changes:

In Supplement 16 above mentioned, the following is shown—on page 156, Sacramento is designated by two stars (* *); on page 157, San Jose and Santa Clara, and on page 158, Stockton, are likewise designated. The same note describing the effect of these two stars follows at the bottom of each of said pages and is as follows:

"* * * Effective July 15, 1915, 'Intermediate' rates named in Section 2-a (see pages 195 to 239, inclusive, of this supplement), will apply under authority of Interstate Commerce Commission Fourth Section Order No. 124 of date April 30, 1915, as amended by order of date June 5, 1915. (A) Effective August 15, 1915, 'Terminal' rates authorized in Sections 2 and 4 of tariff (and as supplemented) will be cancelled; 'Intermediate' rates will thereafter

apply, see T. C. F. B. Circular 16-J. (A)—
‘Advance’.”

Commodities mentioned in Section 2-a of Supplement 16—pages 195 to 239, inclusive,—are Schedule “C” commodities.

Commodities mentioned in Section 2 of Supplement 16—pages 182 to 194, inclusive—are Schedule “B” commodities.

With reference to commodities shown in Section 2 of Supplement 16, being Schedule “B” commodities, we will call the attention of the court to the top of each page where it shows the rates from eastern points to cities in the West taking terminal rates, and to other cities in the West taking intermediate rates.

Points taking terminal rates have the following heading:

“To points shown on pages 25 to 54, inclusive, of tariff, (or as supplemented), as taking terminal rates.”

As to intermediate points the heading reads:

“To points shown on pages 25 to 54, inclusive, of tariff, (or as supplemented), as taking intermediate rates.”

Following it will be seen that the character “A” is shown in most instances, and at the bottom of the page the character “A” is shown to mean “Advance”.

In the original tariff 1-N, Sacramento, Stockton, San Jose and Santa Clara were shown as terminals.

Supplement 16 to Tariff No. 1-N, provided, as shown by the heading, that the points taking intermediate rates had been supplemented. Pages 156, 157 and 158 above mentioned, show that this Supplement 16 to Tariff No. 1-N, has wiped out Sacramento, Stockton, San Jose and Santa Clara as "terminal" points and has placed them in the list of "intermediate" points, they to take intermediate rates as to Schedule "C" commodities beginning July 15, 1915, and as to Schedule "B" commodities, August 15, 1915. (See note before referred to.)

The order of June 5, 1915, mentioned in the note, was merely an order granting the carriers the right to file their tariff schedules on less than statutory notice.

Supplement 16 to Tariff No. 1-N, Section 2-a thereof, pages 195 to 239 of Tariff), covers Schedule "C" commodities. It will be seen from the heading on all of those pages that the rates are divided into "Terminal Rates" and "Intermediate Rates", Supplement 16, as before shown, having placed the four cities in the list of "intermediates".

Circular 16-J connected with Supplement 16 before mentioned, contains a list of "intermediate" points and Sacramento, San Jose, Santa Clara and Stockton are listed as such "intermediate" points on pages 27, 28 and 29 of said circular. In this Circular No. 16-J, as shown by the (*) note, these four cities are intermediates as to west-bound traffic only, but in Supplement No. 1 to said Circular

No. 16-J, page 4 thereof, they are made "intermediate" points as to all traffic, both east and west-bound.

Effect of Increase of Rates.

Going north from Sacramento, San Francisco enjoys the same rate as does Sacramento at the Oregon State Line and north thereof, gradually increasing south, but at Woodland with a differential in favor of Sacramento of 12¢ only. Going eastward, Sacramento enjoys a differential over San Francisco based upon a 12¢ scale, but which diminishes across the State of Nevada and with the same rates to Tonopah and Goldfield territories. Going south through the San Joaquin Valley the rates are the same from San Francisco and Sacramento to all points.

The rates from Stockton and San Francisco are the same at the Nevada State line, likewise the same a short distance north of Sacramento and south they are the same at about Bakersfield.

San Jose and Santa Clara have no advantage over San Francisco to the South at Santa Cruz or Paso Robles.

In the territory between any of the four cities mentioned and San Francisco, the merchants of the latter city can land goods in such territory from San Francisco at approximately the same rate as can the dealers from the other places mentioned.

Thus the situation results that if merchants of San Francisco receive goods from the East at a cheaper rate than the merchants of the four complaining cities, they can undersell those of the latter places and thus drive them out of business. The jobbers of Sacramento pay practically the same freight charges for goods received direct from the East as are paid by San Francisco jobbers for goods sent through to San Francisco and then re-shipped back to Sacramento. In territory outside of Sacramento, the dealer located in San Francisco has all the advantage, as for instance, down the San Joaquin Valley, at Tonopah or Goldfield, Nevada, and at the Oregon State Line, the dealer in San Francisco can ship to the consumer at the same freight charge as can the merchant of Sacramento who pays much more in freight charges for his goods received.

Sacramento is merely an illustration, the same situation applies even more forcibly at the other three cities. The jobbers and manufacturers of these places who have built up large industries under equal rates cannot compete with those located at the more favored points under the orders of the Commission, and the result is that such industries are ruined.

The situation of Sacramento, Stockton, San Jose and Santa Clara, their physical surroundings, right to terminal rates by reason of water competition, and the irreparable damage which they will suffer by reason of the increase in freight rates are most

fully shown in the affidavits filed in the lower court and which are a part of the record, having been made such especially by the order of the lower court. (See Trans., pp. 382-383.) Attached to these affidavits are Schedules showing the increases. The attention of the court is most respectfully called to these affidavits and to the exhibits attached to them.

For affidavit of Messrs. Bradley, Semple and Wall, showing the situation collectively,—(see Trans., pp. 24-32 inclusive); for affidavit of G. J. Bradley, showing the situation at Sacramento,—(see Trans., pp. 33-45 inclusive); for affidavit of S. E. Semple, showing the situation at Stockton,—(see Trans., pp. 46-50 inclusive); for affidavit of W. D. Wall, showing the situation at San Jose and Santa Clara,—(see Trans., pp. 51-55 inclusive).

None of the allegations set forth in these affidavits were disputed or denied. The motion for preliminary injunction and the hearing for final injunction were heard upon these affidavits, including the exhibits.

HISTORY OF THE CASE.

A brief history of the case, as shown by the record on appeal, is perhaps necessary to fully explain the two orders of the Interstate Commerce Commission complained of.

The Fourth Section applications involved in this appeal (see Trans., pp. 391-400 inclusive) were the direct result of the decision by the Interstate Commerce Commission in what is commonly known as the *Intermountain Case*. The first decision is reported in 19 I. C. C. Rep., 238. (See Trans., pp. 96-114, inclusive.)

Petition by Railroad Commission of Nevada.

The Fourth Section of the Act to Regulate Commerce was amended June 18, 1910, in regard to the "long-and-short-haul" clause. It was prior to this date that the Railroad Commission of Nevada petitioned the Interstate Commerce Commission that Nevada points, known generally as *Intermountain points*, be charged no higher rate for west-bound trans-continental freight than was charged to *Pacific Coast terminals*. Prior to said application all Intermountain points had been charged much higher rates on both classes of west-bound freight, viz: freight designated as *class goods* and freight designated as *commodities*, than had been charged for the carriage of like freight to the *Pacific Coast terminals*. Sacramento, Stockton, San Jose and Santa Clara, as well as numerous other points in California, had long prior to such time been designated as *Pacific Coast terminals*, and were such at the time of the application by the Railroad Commission of Nevada. All terminals paid the same rate on west-bound and east-bound trans-contin-

ental freight, the rate being much less than that charged to *Intermountain points*. -

The relief prayed for in the application of the Railroad Commission of Nevada was that Nevada points be given the same rates as were extended to *Pacific Coast terminals*. The prayer of this application is set forth in the findings and conclusions handed down by Commissioner Lane June 6, 1910, and is part of the record. The application was as follows:

"Nevada asks that she be given rates as low as those given to Sacramento." (See Trans., p. 112.)

"The theory upon which the case was presented eliminated all other considerations excepting the claim that all rates extended to Sacramento were reasonable as to Reno and other Nevada points." (See Trans., p. 113.)

The decision of the Interstate Commerce Commission then follows (see Trans. pp. 112, 113), and sets forth the *class rates* to be charged to Nevada points. The only point at issue was whether or not Nevada territory should be charged the same rate as that charged to Pacific Coast terminals. The Pacific Coast terminals on one hand, including Sacramento, Stockton, San Jose and Santa Clara, were considered collectively and as a whole as distinguished from Nevada or Intermountain points; no question was raised as to either the propriety or the advisability of the aforesaid terminals or as to whether or not any of such terminals had been improperly so designated. The decision of the Commission in fact recognized the various

"terminals" as having been properly designated as such and considered them as a whole as distinguished from Intermountain points.

The decision of the Commission makes the following comparisons:

The rates to Reno as a Nevada point are compared to those to Sacramento, a terminal. (See Trans., p. 96.)

Sacramento and San Francisco are jointly referred to as terminals as distinguished from Nevada points. (See Trans., p. 97.)

The point at issue is set forth as follows:

"The State of Nevada, through its railroad commission, now comes asking that Nevada points be given the same rates as are now given to Pacific Coast terminals." (See Trans., p. 97.)

The original complaint of Nevada was that the Interstate Commerce Commission "should adjudge the rates to Sacramento to be reasonable as applied to intermediate points". (See Trans., p. 97.)

When additional eastern carriers were brought in as defendants before the Interstate Commerce Commission the sole petition of Nevada was that the rates charged to such points should not exceed those at that time applicable on shipments to the more distant coast terminals. (See Trans., p. 97.)

The decision of the Commission upon the application in behalf of Nevada points considered the rates charged on both *class goods* and *commodities*. The method of computing rates to Intermountain points which had existed prior to that time had been based on a combination over Sacramento. (See Trans., pp. 98-101, inclusive.)

The decision says as follows:

"The most prominent coast terminals are Seattle, Tacoma, Portland, *Sacramento*, *San Jose*, *Stockton*, Oakland, San Francisco, Los Angeles and San Diego." (See Trans., p. 98. Italics ours.)

The situation is further explained in the decision, viz:

"As we have seen, the rates are higher on almost all commodities from eastern producing points to Reno than on the same commodities to *Sacramento*, the more distant point." (See Trans., p. 107. Italics ours.)

Water Competition Recognized.

The decision also deals with the question of *water competition at Sacramento and other coast terminals*. The water competition and the fact that the four complaining cities were California Terminals because of such water competition, are accepted as proper and the terminal rate situation and the propriety thereof is fully recognized. *Sacramento* as a coast terminal is several times mentioned. The decision itself shows that *Sacramento* is as much entitled to terminal rates by reason of water competition as is San Francisco. (See Trans., pp. 110, 111, 112.)

It will be noted all through the decision that the propriety of *Sacramento*, *Stockton*, *San Jose* and *Santa Clara* as terminal points is never questioned, and that all terminals are considered as a single entity, the rates to Intermountain points being

based on the nearest terminal, which was Sacramento. (See Trans., pp. 107-111, inclusive.)

First Decision of Commission Affected Only Class Rates.

The decision of the Interstate Commerce Commission concluded by fixing rates on *class goods*, but specifically stated as follows: "There is no foundation in the record in this case for the establishment of such commodity rates." (See Trans., p. 113.) The Commission therefore made no order as to commodity rates but directed the complainant—Railroad Commission of Nevada—to furnish the Commission and the rail carriers with a list of commodities regarding which rates were desired, and the matter went over for further hearing. (See Trans., p. 114.)

Commodity Rates Only Are Involved in Case at Bar.

The decision of the Commission above mentioned, handed down June 6, 1910, fixed the rates on *class goods*. They are now blanketed all over the State of California, from Colfax westward and therefore are not involved, since Sacramento, Stockton, San Jose and Santa Clara, being west of Colfax, take the Colfax rate which is the same as that charged to San Francisco and Oakland.

On June 18, 1910, twelve days after the foregoing decision, Congress amended the Fourth Section of the Act to Regulate Commerce.

Petitions by Carriers Under Fourth Section.

Prior to the aforesaid amendment, the construction of the Fourth Section of the Act had been

that the rail carriers primarily could decide what constituted "under substantially similar circumstances and conditions," and thus determine for themselves as to when they could or could not violate the provisions of the long-and-short-haul clause. This amendment, as before stated, was passed twelve days after the decision by the Interstate Commerce Commission as to *class* rates but before any determination had been made as to *commodity* rates. Following the amendment the rail carriers petitioned the Commission to be relieved from the provisions of the long-and-short-haul clause *and to continue the then present method of rate making* so that higher rates could be charged to Intermountain points than were charged to Pacific Coast terminals. These applications were Nos. 205, 342, 343, 344, 349, 350 and 352. (See Trans., pp. 391-400, inclusive.)

CARRIERS DID NOT PETITION TO CHANGE RATES.

These applications, Nos. 205, etc., were filed with the tariffs theretofore in force and which tariffs were a part of the applications. These tariffs show Sacramento, Stockton, San Jose and Santa Clara as *Pacific Coast terminals*, and show that the rates then in effect to the four cities mentioned were the same as the rates to San Francisco and Oakland and were higher than the rates to Intermountain territory, the rates to the last-named points being based on Sacramento as a terminal.

Particular attention is called to the wording of the applications. The carriers petitioned to *continue the then present method of making rates*, and asked that the rates theretofore in effect should be sanctioned by the Commission. The reasons given were *competition by water at the California terminals*.

Some of the applications referred to dealt only with freight to and from points outside of Nevada and California, and have no bearing whatsoever upon the present issues. In all cases, however, as will be further shown by the tariffs filed by the carriers in connection with the applications, the petition was that the rates formerly existing be sanctioned by the Commission. These applications were filed under the amended Fourth Section of the Act, which provided that greater charges should not be imposed for a lesser than for a greater haul, the shorter being included in the longer, but provided further, however, that no tariffs then lawfully existing were required, as stated in the Act, "to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, *nor in any case where application shall have been filed before the Commission, in accordance with the provisions of this section, until a determination of such application by the Commission.*"

It was under this provision sanctioning a continuance of the tariffs that the applications by the carriers were filed.

TARIFFS PETITIONED TO BE CONTINUED IN FORCE DESIGNATED SACRAMENTO, STOCKTON, SAN JOSE AND SANTA CLARA AS "TERMINALS" THE SAME AS SAN FRANCISCO.

An inspection of the tariffs filed with the foregoing applications, whenever pertinent, shows as follows:

1. Sacramento, Stockton, San Jose and Santa Clara were designated as California terminals, and the rates applicable to these four cities were in all instances the same as the rates charged to San Francisco and Oakland.

2. Neither the applications nor the tariffs sought to make any change in the terminal rate situation or in the list of terminals.

3. The rail carriers sought to continue in effect the rates which had been operative prior to the amendment of June 18, 1910, which rates were the same to Sacramento, Stockton, San Jose and Santa Clara as to San Francisco and Oakland, and lower to the four cities first mentioned than to Intermountain points.

The tariffs filed as aforesaid in many instances have no bearing upon any traffic originating in or destined to any point in California or Nevada, such as those tariffs which quoted only rates to or from points in Oregon, Washington, North Pacific Coast Terminals, British Columbia Pacific Coast Terminals or "through joint water and rail rates" from the east via Vancouver, B. C., to points in the Orient and foreign countries. The rates covered by each tariff are designated on the outside cover thereof.

We will quote such designations from these tariffs, giving the trans-continental freight bureau number, showing the traffic involved.

Tariff 1-L, in applications Nos. 205 and 352.

“Westbound tariff No. 1-L naming local and joint rates governed by local joint and proportional commodity rates from eastern shipping points designated on pages 2 to 10 inclusive to California Terminals designated on page 11 and other points in California, Nevada and Utah, as provided on page 12.”

On page 11 of the said tariff appears the heading “California Terminals”. In the list of said terminals appear the following cities: “Sacramento,” “San Jose,” “Santa Clara,” “Stockton”.

On page 12 of said tariff appears the list of “Intermediate” points, the names of the four cities mentioned not appearing. No change by supplement.

Tariff 4-H, in applications Nos. 205, 343 and 352:

“Westbound Tariff No. 4-H naming local and joint class rates and local joint and proportional commodity rates from eastern shipping points to North Pacific Coast Terminals and points in Oregon and Washington and also to British Columbia Pacific Coast Terminals and other points in British Columbia.”

An inspection of the tariff, and its supplements will show that no rates on traffic either to or from any California or Nevada points were involved.

Circular 16-F, in applications Nos. 205, 349 and 352:

“List of ‘Intermediate’ Pacific Coast points in California, Oregon and Nevada, showing roads on which located, and nearest Terminal thereto.”

The list of “Intermediate” points in this circular does not include Sacramento, Stockton, San Jose or Santa Clara, but in naming the “Terminals” nearest to such intermediate points, these four cities appear as such terminals. For instance, on line 3, page 11, opposite the “Intermediate station—Acampo”, appears as the “Nearest terminal—Stockton”. On page 11, opposite the “Intermediate station—Agnew” appears as the “Nearest terminal—San Jose”. Opposite the “Intermediate station—Alta” appears as the “Nearest terminal—Sacramento”, opposite the “Intermediate station—Centerville” appears as the “Nearest terminal—Santa Clara”. These four cities are classed as terminals in every instance. There was no change in the supplement.

Tariff S. R. 1001, in application 342:

“Joint proportional tariff naming proportional class rates and proportional commodity rates from points in the United States designated on page 1 of tariff to Vancouver, B. C., on traffic destined to and consigned through to foreign destinations (or beyond), to which through rates are herein provided in connection with Canadian Pacific Ry., Minn., St. Paul & Sault Ste. Marie Ry. and participating carriers named on page 1 of tariff and also

through class rates and through commodity rates to Australia, Fiji Islands, New Zealand, or beyond."

The above tariff refers only to through traffic from the East by northern routes destined to foreign points via Vancouver, B. C. No traffic to or from California or Nevada points was involved. The supplement made no change except that additional points in the Orient were mentioned.

Tariff S. R. No. 1003, in application No. 342:

Practically the same as *Tariff S. R. 1001*, preceding, and applied only to through shipments to foreign ports from the East via Vancouver, B. C.

Tariff S. R. No. 1002, in application No. 344:

"Westbound tariff naming proportional commodity rates from ship-side, New Orleans, La., Galveston, Texas City, Tex., and traffic originating in foreign countries to California Terminals as designated on page 1."

On page 1 of said tariff, under the heading "California Terminals" appear as such terminals "Sacramento", San Jose", Santa Clara", "Stockton". No change by supplement.

Tariff No. 2-H, in application No. 349:

"Eastbound tariff No. 2-H naming local and joint class rates and local, joint and proportional commodity rates from North Pacific Coast Terminals and points in Oregon, Washington and Idaho and points in the United States and Canada."

An inspection of said tariff and supplement thereto will show that traffic from or to California or Nevada points was not involved.

Tariff No. 3-I, in application No. 349:

"Eastbound tariff No. 3-I naming local and joint class rates and local joint and proportional commodity rates from California Terminals designated on page 1, and interior points in California, Nevada and Utah."

On page 1 of said tariff appears the heading "California Terminals" and thereunder are named as such terminals, "Sacramento", "Stockton", "San Jose", "Santa Clara". On page 2 of said tariff appears the list of "Intermediate Points", and these four cities are not so designated.

Tariff 7-C, in application No. 349:

"Eastbound tariff No. 7-C naming joint class rates and joint commodity rates from points in California, Nevada and Utah designated on pages 1 to 4 inclusive, and points in Minnesota, North Dakota, South Dakota and Manitoba."

On pages 3 and 4 of said tariff, under the heading "California Terminals", appear the following cities: "Sacramento", "Stockton", "San Jose", "Santa Clara". The supplements made no change.

Tariff 9-C, in application No. 349:

"Eastbound tariff No. 9-C naming local and joint class rates and local joint and proportional commodity rates from North Pacific Coast Terminals and points in Oregon, Washington, Idaho and British Columbia to points in Minnesota, North Dakota and South Dakota."

Under said tariff, no traffic to or from California or Nevada points was involved. No change by the supplement.

Tariff 10-C, in applications Nos. 349 and 350:

“Eastbound and westbound tariff No. 10-C naming joint class rates and joint commodity rates between points in Minnesota, North Dakota, South Dakota and Manitoba and San Francisco and Oakland, Cal., in connection with Pacific Coast Steamship Co., Alaska Pacific Steamship Co., E. V. Rideout Co.”

This tariff covered only joint water and rail rates moving through San Francisco and Oakland between the Northwest and points reached by steamer, and had no bearing on the terminal rate situation or on rates to or from points in California or Nevada.

Tariff 6-D, in application No. 350:

“Westbound tariff No. 6-D naming commodity rates from southeastern common points to Pacific Coast Terminals in California, Oregon, and Washington designated on pages 16 and 17, and points in Oregon and Washington, also to British Columbia Pacific Coast Terminals.”

On page 17 of said tariff under the heading “Pacific Coast Terminals” appear the following cities: “Sacramento”, “Stockton”, “San Jose” and “Santa Clara”. No change by supplement.

Tariff S. R. 1004, in application No. 349:

“Eastbound special tariff naming joint rates on lumber, shingles, and other articles from all

points on" (then appear the names of some 33 railroads, none of which operate in California) "in Oregon, Washington, Idaho, Montana, Alberta and British Columbia."

None of the traffic covered by said tariff or supplement involved either California or Nevada points.

Tariff 5-F, in application No. 350:

"Competitive local and joint tariff naming class and commodity rates from points in Eastern Canada to North Pacific Coast Terminals, and points in Oregon and Washington, also British Columbia Pacific Coast Terminals."

This tariff did not involve any charges on traffic either to or from points in California or Nevada. No change by supplement.

Tariff 8-D, in application No. 350:

"Westbound tariff No. 8-D naming local and joint class rates and local and joint commodity rates from points in Minnesota, North Dakota and South Dakota to North Pacific Coast Terminals, and points in Oregon and Washington and British Columbia Pacific Coast Terminals."

This tariff did not involve any charges on traffic either to or from points in California or Nevada. No change by supplement.

Tariff 11-C, in application No. 350:

"Westbound tariff No. 11-C naming joint class rates and joint commodity rates from points in Minnesota, North Dakota and South

Dakota, to points in California, Nevada and Utah designated on pages 5, 6 and 7."

On page 6 of said tariff, under the heading "California Terminals" appear "Sacramento", "Stockton", "San Jose", "Santa Clara". On page 7 of said tariff is given the list of "Intermediate" points and the four cities mentioned are not listed thereunder. No change by supplement.

Tariff S. R. 998, in application No. 349:

"Eastbound special tariff naming local joint and proportional commodity rates on lumber, shingles and other articles from points in California, Nevada, Oregon and Utah designated on pages 1 to 5 inclusive, to points in the United States and Canada."

On page 3 of said tariff we find mentioned "Sacramento" and "San Jose", on page 4, "Santa Clara" and "Stockton", which cities take the same rates as San Francisco and all other California Terminals.

**Decision of Commission Which Was Basis of Fourth Section
Order No. 124.**

The aforesaid applications Nos. 205, etc., were heard and determined at one time, the findings and conclusions of the Interstate Commerce Commission being handed down June 22, 1911. In so far as they affected the rates to Intermountain points as distinguished from California terminals, they are reported in 21 I. C. C. Rep. 329, and are set forth in full in the record. (See Trans., pp. 125-181, inclusive.) This decision was the basis of

Fourth Section Order No. 124 which is set forth in the record. (See Trans., pp. 116-118, inclusive.)

Commodity rates only were involved, and the order referred to *intermediate points* as distinguished from *Pacific Coast terminals*, Sacramento, Stockton, San Jose and Santa Clara being such terminal points. The first portion of the order reads as follows:

“These applications” (applications Nos. 205, etc.) “as above numbered, on behalf of the transcontinental freight bureau, ask for authority to *continue rates* from eastern points of shipment which are higher to *intermediate points* in Canada and in the states of Arizona, New Mexico, Idaho, California, Montana, Nevada, Oregon, Utah, and Washington, and other states east thereof, than to *Pacific Coast terminals*.” (See Trans., p. 116. Italics ours.)

It will be noted that the order of the Commission does not attempt in any wise to change the terminal rate situation, such point not being involved in any of the applications. In fact, the only point at issue was as to the extent that the Fourth Section of the Act to Regulate Commerce could be violated in charging higher rates to *Intermountain points* than were charged to the *terminal points*, all cities enjoying terminal rates being considered and treated as rightfully entitled thereto.

The point at issue is shown by the decision of the Commission set forth in the record as follows:

“The contention of Nevada had been that under all provisions of the Act to Regulate Commerce the rates extended by the railroads

to the *Pacific Coast terminal cities, such as Sacramento and San Francisco*, should be granted to Nevada. By reference to the previous report" (19 I. C. C. Rep. 238, see Trans., pp. 96-114 inclus.) "it will be seen how insistent was the claim that to charge any higher rate to Nevada points than was given to *Sacramento* was a violation of the Fourth Section of the Act prohibiting lower rates at the more distant point; that there was no such water competition at these coast terminals as justified the preferential rates given to them; that the rates to the coast were in fact reasonably and not abnormally low; that this was recognized by the carriers in making their divisions east of Ogden in that they accepted upon business destined to points in Nevada the same divisions upon transcontinental traffic as when destined to the coast terminals; and that whatever shadow of water competition remained which was potent in reducing the rate below a fully normal standard of reasonableness was more than offset by the shorter haul to the interior points, making the coast rate a reasonable one for the shorter haul to this Intermountain country." (See Trans., p. 127.)

In the decision the Pacific Coast Terminals as a whole are considered and San Jose is recognized as such a terminal. (See Trans., pp. 139, 140.)

The concluding part of the decision which was the basis of the original Fourth Section Order No. 124 shows conclusively that the terminal rate situation as then existing was considered proper and that Fourth Section Order No. 124, following said decision, did not intend or even contemplate any addition to nor diminution of the number of cities in California which were receiving terminal

rates. We will quote from the decision (See Trans., pp. 165, 166):

“We desire to be extremely conservative in this the first application of the new law, and to require an adjustment of rates that will be safely within the zone of our discretion. For this reason we have decided that the transcontinental carriers serving Reno and other points upon the main line of the Central Pacific shall make no higher charge upon any article carrying a commodity rate than is contemporaneously in effect from Missouri River points, such as Omaha and Kansas City, to coast terminal points. This principle we shall also expect to be applied on commodity rates to all main-line intermediate points in Nevada and California. Traffic originating at Chicago and in Chicago territory moving under commodity rates may have a rate seven (7) per cent higher than that imposed on freight originating in Chicago and Chicago territory and destined to the *coast terminals*. From Buffalo-Pittsburg territory the rates to intermediate points may rise above those demanded and charged from the same points and territory to the *coast terminals* to the extent of fifteen (15) per cent, while from New York and trunk line territory the rates charged shall not exceed twenty-five (25) per cent over and above *terminal rates*. This means that Suisun, Auburn, Truckee, Reno, and Elko, for instance, points intermediate to San Francisco from the east, shall have at least the benefit of the commodity rates extended from the Missouri River to *Sacramento and San Francisco*, and shall pay no more than seven (7) per cent above the Chicago-coast terminal rates, and corresponding increases of fifteen (15) and twenty-five (25) per cent, respectively, from Pittsburg and New York territories.

"Some of the petitions under the fourth section which have been considered are made by carriers reaching *California terminals* through the southern gateways, southern Nevada and Arizona. These applications are also denied in so far as they involve the imposition of higher rates upon intermediate points than are applied on commodities from the Missouri River to Los Angeles, San Francisco, or other coast terminals. To all such intermediate points (Ashfork, Maricopa, San Bernardino, Bakersfield, Fresno, and Ventura, for instance) terminal rates shall not be exceeded as from Missouri River points, with the same proportionate advances east of the Missouri River as heretofore specified."

Fourth Section Order No. 124, hereinbefore quoted from, shows that the question at issue was the charging of higher rates to interior points than to *Pacific Coast Terminals*, which included Sacramento, Stockton, San Jose and Santa Clara.

The four cities, respondents herein, have, at all times since said order, been recognized as *Pacific Coast Terminals*, and the subsequent appeals and litigation relative to said order did not consider nor contemplate a change in the then existing terminal rate situation.

The rail carriers were dissatisfied with said Fourth Section Order No. 124 and appealed therefrom, their contention being that said fourth section as amended was unconstitutional. The appeal was taken to the Commerce Court, thereafter to the Supreme Court of the United States and the

order of the Interstate Commerce Commission, viz, Fourth Section Order No. 124, was sustained.

The decision on the foregoing appeal, known as the Intermountain Rate Cases, is reported in

234 U. S. 476.

The Supreme Court held that the right of determination which had theretofore primarily vested in the carrier, was by the amendment of 1910 transferred to the Interstate Commerce Commission. *The right, however, to make rates was not lodged in the Commission, such right is lodged only in the carrier.* The purpose of the amendment was that if the carrier, the rate making power, desired to violate the long-and-short-haul clause, which was made absolute except for the proviso inserted, it could make *application* to the Commission, and *after application* the common carrier could in *special cases, after investigation*, be authorized by the Commission to charge more for a lesser than for a longer haul over the same route. This decision was handed down by the Supreme Court June 22, 1914.

Points Decided by Commission and Supreme Court.

It will be remembered that the carriers applied to the Commission for authority to continue rates theretofore existing, their contention being that the rate situation should not be disturbed, that the "Terminal points" in California were entitled to the rates which they had formerly enjoyed and that the "Intermountain points" should be charged

the terminal rate plus an additional charge for the back haul, the right to such difference being because of competition at the terminals. The issue was "California Terminals" collectively on the one hand, as distinguished from "Intermountain points" on the other. The Commission recognized the validity of the carriers' claim, accepted the terminal rate situation as it then existed, and prescribed the extent to which the carriers might be relieved from the operation of the fourth section. So far as the Interstate Commerce Commission was concerned, the matter was then ended. The cause was carried to the Supreme Court of the United States and the sole issue was the constitutionality of the amendment to the fourth section. The Supreme Court decided in favor of the amendment. There was then nothing further to be done except for the carriers to obey Fourth Section Order No. 124 which gave them the right to charge on freight destined from the East to Intermountain points an amount exceeding the charge to California terminals by 7, 15 and 25 per cent, according to the point of origin.

**APPLICATION FOR MODIFICATION OF FOURTH SECTION
ORDER NO. 124.**

The time was very limited within which the carriers could file new tariffs. They therefore petitioned the Commission to extend the effective date of Fourth Section Order No. 124, stating that they would fully conform with the order except

that they requested a modification as to certain commodities which they designated as Schedule "C" commodities. This application was filed July 9, 1914, and is set forth in full in the record. (See Trans., pp. 235-237, inclusive.)

Particular attention is called to this application since it shows the extent of the relief prayed for, which was the jurisdictional matter before the Interstate Commerce Commission. In their application the carriers divided commodities into three classes, or, as they designated them, schedules. They were as follows:

Schedule "A". Commodities which were principally the products of the soil and as to which the rates to Pacific Coast terminals would apply as the maximum to all intermediate points and *regarding which no relief was requested.* (See Trans., p. 235. Italics ours.)

Schedule "B". Commodities which were alleged to be subject, at the Pacific Coast terminals, to competition of the water carriers, but upon which the rates to Pacific Coast terminals by rail were more than \$2.00 per 100 lbs. in less than carloads, and \$1.00 per 100 lbs. in carloads, and *regarding which the carriers asked for no relief.* (See Trans., pp. 235, 236. Italics ours.)

Schedule "C". This list covered generally manufactured commodities for the transportation of which the rail carriers were subject to severe competition at Pacific Coast terminals of carriers by sea and upon which the rates were less than those on Schedule "B" commodities, or, as alleged by the carriers, the rates were sub-normal to a marked degree, and were necessary in order that the rail car-

riers could move their share of this sea competitive traffic, also to enable manufacturers and shippers at points of production not located directly upon the Atlantic seaboard to share in the trade of the Pacific Coast. (See Trans., p. 236.)

A reading of the application mentioned will show that the rail carriers applied only for additional relief under Fourth Section Order No. 124 as to "Intermountain points" as distinguished from the "Coast terminals", and this only as to Schedule "C" commodities. The application was to amend Fourth Section Order No. 124 which dealt only with rates to the Intermountain territory. (See Trans., pp. 236-237.)

As to Schedule "A" and Schedule "B" commodities, the application of the carriers specifically said that no relief was requested.

A hearing pursuant to this application began October 6, 1914. None of the respondents in this case nor any merchants, manufacturers or shippers of the four cities involved were served with any notice of hearing. The only matter before the Commission was as to the amount of relief which should be granted as to Schedule "C" commodities. No change in the terminal rate situation was requested.

In the affidavits filed in the lower court and which are a part of the record herein, and in our petition as well, we have shown that no evidence was given before the Interstate Commerce Commission at the hearing in October, 1914, under the

above application, which would warrant any change in the Pacific Coast terminal situation or justify an increase of rates to and from the four cities herein involved. We submit that these facts are uncontroverted.

Order of January 29, 1915, Dealt Only With Intermountain Points.

Pursuant to the aforesaid hearing the Commission handed down its order of January 29, 1915, based upon its findings and conclusions of the same date. The decision and order are both set forth in the record. (For the decision, see Trans., pp. 275-322, inclusive; for the order of January 29, 1915, see Trans., pp. 323-327, inclusive.)

The order of January 29, 1915, dealt only with *rates to Intermountain points*. The Commission in its decision of that date, for the first time designated a strip of territory lying between the Pacific Ocean and the Sierra Nevada Mountains as "back haul territory", distinguishing the same from "Intermountain territory". Rates were not fixed by the order of January 29, 1915, as to back haul points and in that connection the Commission says:

"The record in this case is not sufficient to afford a basis warranting the Commission in prescribing the exact measure of these rates. We shall, therefore, make no order in regard thereto at this time."

"No evidence has been presented in this case to show that it is necessary to apply the coast terminal rates to any points except the ports of call on the Pacific Coast at which the Atlantic-Pacific steamship lines deliver freight.

We shall also authorize the maintenance of higher rates as hereinbefore outlined to the Intermountain points. We shall expect the carriers within sixty days from the date of service hereof to submit to the Commission such plan for adjustment of rates to the back haul points as they may desire. Should the carriers submit no such plan within this time, the Commission will undertake such investigation as to these rates as will enable it to enter a proper order with regard thereto." (See Trans., p. 298.)

Second Petition of Carriers Was to Maintain Terminal Rate Situation.

Following the suggestion to the rail carriers in the decision rendered January 29, 1915, the carriers on March 23, 1915, submitted their plan for the fixing of rates to back haul territory, the petition reading as follows:

"The lines reaching to California terminals have submitted the following plan for making rate from eastern defined territory to such points:

"Deduct from terminal commodity rates 7 cents per 100 lbs., carloads, and 10 cents per 100 lbs., l. c. l., for basing rates, to which add full local rates from nearest terminal point to destination. This basis to prevail eastward from the terminal point until point is reached where the direct rate is the same or less. In no case shall rate to any back haul point be less than to the terminal point." (See Trans., p. 50 and p. 340.)

The aforesaid plan and none other was submitted to the Commission and after argument, but without the taking of any evidence, the Commission

rendered its further decision of April 30, 1915, reported in 34 I. C. C. Rep., p. 13. (See Trans., pp. 339-346, inclusive.) This was followed by amended Fourth Section Order No. 124 of the same date. (See Trans., pp. 347-351, inclusive.)

The application of the carriers was in effect a request that the terminal rate situation be not changed. This is recognized by the Commission, for in its findings and conclusions of April 30, 1915, it says:

"The plan for constructing rates to back-haul points proposed by the lines leading to the California terminals would create a zone contiguous to the terminals to which terminal rates would apply. The extent of this zone would be limited by the distances to which local rates of 7¢, carloads, and 10¢, less than carloads, would reach. *It would, however, in substance include all of the points that have heretofore been accorded terminal rates.*" (See Trans., begin. bot. p. 341. Italics ours.)

Arbitrary Order of the Commission.

The plan proposed by the carriers, being the only one considered, was rejected and the Commission adopted a new scheme without the taking of evidence or without there having been any application for that particular purpose. The situation in this respect is admitted by the answer of the Interstate Commerce Commission, wherein it is not denied that the order of April 30, 1915, was granted without having been applied for and without the taking of evidence, but by inference the Commission claims it had generally investigated the problem for many

years. (See Trans., p. 82.) The record, however, conclusively shows that this particular matter had not been investigated, therefore the order of April 30, 1915, was an arbitrary exercise of power on the part of the Commission and was made regardless of the fact that it was unjustly discriminatory as to the four cities involved in this matter.

The first three lines of the report of the Commission of April 30, 1915, show that only Schedule "C" commodity rates were involved, it being distinctly so stated (see Trans., p. 340), nevertheless the order of the Commission of that same date, amended Fourth Section Order No. 124, covered rates on Schedule "B" commodities to the back haul points, the order of the Commission reading as follows:

"It is further ordered, that the petitioners herein be, and they are hereby, authorized to establish and maintain commodity rates from all points in zones 2, 3 and 4, as above defined, to points intermediate to Pacific Coast terminals, that are higher to intermediate points than to Pacific Coast terminals, provided that on and after July 15, 1915, except as hereinafter specified, the rates to intermediate points from points in zones 2, 3 and 4 shall not exceed the rates on the same commodities from the same points of origin to the Pacific Coast terminals by more than 7 per cent. from points in zone 2, 15 per cent from points in zone 3, and 25 per cent. from

The above portion of the order deals with Schedule "B" commodities regarding which there points in zone 4." (See Trans., p. 349.)

had been no application for a change in rates. The original applications specifically stated that no change was desired as to the rates on Schedule "B" commodities.

The order of the Commission, however, went further regarding less-than-carload commodity rates and increased the amount to 25, 40, and 55 cents per hundred pounds according to the point of origin. The order of the Commission is as follows:

"It is further ordered, that petitioners herein be, and they are hereby, authorized to establish the less-than-carload commodity rates proposed in their application for additional relief, as shown in said appendix, from points in zones 2, 3, and 4 to Pacific Coast terminals, and to continue higher rates to intermediate points, provided that on and after July 15, 1915, the rates to intermediate points do not exceed the rates from the Missouri River to the same destinations by more than 25, 40, and 55 cents per 100 pounds from points in zones 2, 3, and 4, respectively." (See Trans., pp. 350-351.)

The effect of the above provisions of the order of the Commission was to make a sudden and further increase in transcontinental rates to Sacramento, Stockton, San Jose and Santa Clara for which no application had been filed and regarding which no hearing had been had. It was an arbitrary exercise of rate making power by the Commission.

The order of the Commission then refers to Schedule "C" commodities, the order reading:

"It is further ordered, that, except as hereinbefore specified, petitioners herein be, and they are hereby, authorized to construct rates upon the commodities listed under Schedule "C", named in said report of January 29, 1915, from eastern defined territories to points intermediate to Pacific Coast ports, by taking the full terminal rates and adding thereto arbitraries varying with distance from the nearest port not exceeding 75 per cent of the local rate from the nearest port to each destination, provided that in no case shall the rates constructed as above described exceed the maximum rates to Intermountain points hereinbefore prescribed." (See Trans., p. 351.)

The Commission further ordered that in the observance of this order as to rates on Schedule "C" commodities, the California terminals should consist only of San Diego, Wilmington, East Wilmington, San Pedro, East San Pedro, San Francisco and Oakland. (See Trans., p. 351.)

The order of January 29, 1915, referred only to Schedule "C" commodities, the first sentence of said order specifically so stating. (See Trans., p. 323.) The order of April 30, 1915, however, has increased the trans-continental rates to and from Sacramento, Stockton, San Jose and Santa Clara, as to Schedule "B" commodities, by the percentages or the amounts above mentioned, according to the point of origin.

Tariffs Increased All Rates to the Four Cities.

Following the aforesaid order of April 30, 1915, the rail carriers filed the tariffs which were directly

complained of, namely, Supplement 16 to Trans-Continental Freight Bureau West Bound Tariff No. 1-N, I. C. C. No. 996 of R. H. Countiss, Circular No. 16-J, and Supplement No. 1 thereto. These tariffs are a part of the record and specially made so by order of the lower court. (See Trans., p. 389.) These tariffs show that the rates to Sacramento, Stockton, San Jose and Santa Clara were increased as to Schedule "B" commodities according to the provisions of the order as above set forth, the rates on Schedule "B" commodities to San Francisco and Oakland not being changed. As to Schedule "C" commodities the rates to said four cities were increased to the extent that in addition to the full terminal rate to San Francisco they must pay three-quarters of the local back haul charge from said terminal.

Protest to Commission Against Increase of Rates Disallowed.

Following the filing of the tariffs aforesaid, respondents herein filed protests with the Interstate Commerce Commission against the increase in rates as to both Schedule "B" and Schedule "C" commodities, especially as to Schedule "B" commodities which had not been considered, on the grounds that such increases were unreasonable, unjust and discriminatory, had been allowed without application therefor having been made and without evidence having been introduced to justify the same, that Sacramento, Stockton, San Jose and Santa Clara had been extended terminal rates by reason of water competition and that

freight charges to said cities had been reduced by reason of such competition and that no changed conditions having arisen such increase in rates as to Schedule "B" and as to Schedule "C" commodities were contrary to provisions of the Act to Regulate Commerce. A rehearing and investigation of the matter was demanded. The protests and petitions were denied by the Commission. These facts are especially set forth in the amendment to the petition originally filed in the lower court. (See Trans., pp. 20-23, inclusive.) These allegations are admitted in the answer of the Interstate Commerce Commission (See Trans., pp. 81, 82), except wherein it argues that the representatives of the four cities should have taken other steps. As to the facts of the case, the joint affidavit of Messrs. Bradley, Semple and Wall (see Trans., pp. 24-32, inclusive); the affidavit of G. J. Bradley (pp. 33-45, inclusive); the affidavit of S. E. Semple (pp. 46-50, inclusive), and the affidavit of W. D. Wall (pp. 51-55, inclusive), all fully substantiate the allegations set forth both in the petition and in the amendment to the petition filed in the District Court on behalf of the complainants therein. These affidavits are a part of the record, the cause having been submitted to the lower court upon the petition and amendment to the petition, the affidavits filed on behalf of petitioners in the lower court, being the affidavits just mentioned, and upon the exhibits filed at the time of the hearing of the application for a temporary injunction, also upon the exhibits

filed at the time of the hearing for final injunction. (See Trans., p. 382.) The affidavits above mentioned were directed by the lower court to be made a part of the transcript of record on appeal. (See Trans., bottom of page 382.) The allegations contained in these affidavits were neither denied nor disputed.

Points and Authorities.

Petitioners in the lower court sought a relief directly given them by statute. The orders of the Commission of January 29, 1915, and April 30, 1915, and the tariffs filed by the rail carriers thereunder, had a twofold effect, first, to increase the freight rates to and from Sacramento, Stockton, San Jose and Santa Clara, and second, to take the four cities named out of the list of "California Terminals" and to classify them as "Intermediates". Not only was the increase in freight rates unjustified, but the depriving of the four points mentioned of the benefit of terminal rates was unreasonable, unjust and discriminatory against them and in favor of San Francisco and Oakland.

We contend that the orders of the Commission and the tariffs filed by the carriers pursuant thereto are unlawful for the following reason, viz: said orders were beyond the statutory power of the Commission and for the following reasons:

(a) The orders of the Commission directed the carriers to file certain tariffs for which no applica-

tion had been made and regarding which no evidence had been taken.

(b) That said orders and tariffs were unjust, unreasonable and discriminatory as to the four cities involved.

(c) Respondents herein, by reason of said orders and tariffs, were deprived of property without due process of law.

(d) That the increase in rates was contrary to the provisions of the last paragraph of the fourth section of the Act to Regulate Commerce.

(e) That respondents herein, by reason of the above matters, suffered great and irreparable injury.

Appellants herein, at the hearing in the lower court, took a mistaken view of the nature of the relief prayed for. The District Court was not requested to make an affirmative order granting to the petitioners therein a new right, but was asked to suspend the orders of the Commission in so far as they were unlawful.

STATUTE GIVES RIGHT TO RELIEF PRAYED FOR.

The Commerce Court was created by the Act of June 18, 1910 (36 Stat. L. 539), which Act was thereafter incorporated into the Judicial Code, Act of March 3, 1911, Ch. 231, 36 Stat. L. 1087-1169.

Thereafter the Commerce Court was abolished, but the jurisdiction and procedure of the Commerce Court as it existed before its abolition, were by said act vested in the District Courts of the United States. The Act abolishing the Commerce Court was approved October 22, 1913 (36 Stat. L. 219), the same having been incorporated in the Deficiencies Appropriation Act of October 22, 1913, Ch. 32, 230.

The various District Courts of the United States have the same jurisdiction which formerly vested in the Commerce Court. The act creating the Commerce Court, however, did not deprive the courts of the United States generally of any powers which they formerly exercised, but rather delegated such powers to designated courts and especially enumerated certain of the same.

For the sake of convenience we will refer to the Judicial Code and the sections thereof. *Judicial Code*, section 207, which outlined the jurisdiction of the Commerce Court, thereafter transferred to the District Courts, grants jurisdiction, among other things, in the following matters:

“Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.”

Section 208 of the Judicial Code says:

“Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the Commerce Court against the United States. The pend-

ency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the Commerce Court, in its discretion, may restrain or suspend, in whole or in part, the operation of the Commission's order pending the final hearing and determination of the suit."

The Act of October 22, 1913, in abolishing the Commerce Court and transferring the jurisdiction to the District Courts, also says:

"The venue of any suit hereafter brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission, shall be in the Judicial District.
* * *

PETITIONERS BELOW WERE ENTITLED TO SUE.

Appellants have made the claim that the petitioners below had no right of action. On the argument when application was made for the injunction, they admitted that the City of Santa Clara, a body politic, might sue, but asserted that the commercial bodies could not.

Localities, Bodies Politic and Associations.

All of the petitioners in the lower court were authorized by statute to institute the proceeding which they did for an injunction. Three of the petitioners are commercial organizations and traffic associations formed for the purpose of representing jobbers, merchants and manufacturers located at Sacramento, Stockton, San Jose and Santa

Clara, in all traffic matters in which the members of the association might be interested. The merchants, manufacturers and jobbers of these cities are members of these associations and are directly interested in all freight regulations. The City of Santa Clara, the other petitioner in the court below, is a municipal corporation or body politic and represents the interests of the citizens of that community.

The Act to Regulate Commerce provides that bodies are authorized to apply for relief to the Interstate Commerce Commission in various matters and become parties to such proceedings. Their right to represent others is directly granted. Section 13 of the Act to Regulate Commerce (Act February 4, 1887, 24 Stats. L. 379) contains this provision:

*"That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts * * *."* (Italics ours.)

The foregoing conclusively shows that the Act to Regulate Commerce provides for the protection, as to rail rates, of persons, companies, firms, corporations, localities, associations, mercantile, agricultural, or manufacturing societies or other organizations, bodies politic and municipal organi-

zations. The Act to Regulate Commerce gives them the right to complain to the Commission, and provides that the Commission must protect them by a suspension of the tariffs or practices, and a hearing. This the Commission did not do.

Section 13 further provides:

“No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.”

Section 3 of the Act to Regulate Commerce (24 Stats. L. 379) reads in part as follows:

“That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular *person, company, firm, corporation or locality*, or any particular description of traffic, in any respect whatsoever, or to subject any particular *person, company, firm, corporation, or locality*, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.” (Italics ours).

Section 2 of the Act to Further Regulate Commerce with Foreign Nations and Among the States (Act Feb. 19, 1903, 32 Stat. pt. 1, p. 847), says:

“That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any Circuit Court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consid-

eration, and inquiries, investigations, orders and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers."

These statutes conclusively show that persons, companies, firms, corporations, localities, associations, mercantile, agricultural or manufacturing societies or other organizations, bodies politic and municipal organizations have the right to complain against any unjust traffic regulation or other act of the carriers which may affect their interests, and that in the settlement of any controversy all interested parties should be brought before the Commission or before the Court, as the case may be.

Judicial Code, Section 212, in part reads as follows, as to matters which had theretofore transpired before the Interstate Commerce Commission and which have been brought thereafter before the courts of the United States:

"Provided that the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and

speed the determination of such suits. Provided, further, *that communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by any one under the provisions of this chapter, or the Acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof; and the Attorney General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or non-action of the Attorney General therein.*" (Italics ours.)

We submit that the Act to Regulate Commerce and the acts of Congress relative to judicial proceedings to review the orders of the Interstate Commerce Commission, contemplate the right to bring suit on behalf of association, localities, or bodies politic.

The argument of appellants is that although associations, organizations and the like may complain to the Commission under Sections 13 and 15 of the Act to Regulate Commerce, and although the laws of the United States specifically give such complainants the right of action before the federal courts to set aside or enjoin orders of the Commission, yet should the Commission illegally and contrary to the Constitution of the United States deny relief, or even ignore the complaint, the complainants would be

compelled to abide by such action and would have no redress. This would make the Commission an arbitrary rate-making body superior to all law or rules of justice.

Class Suits.

Under the general principles pertaining in equity, representatives of a class or unincorporated associations may bring bills in behalf of others similarly situated.

Foster on Federal Practice, 5th edition, volume 1, section 113, at the bottom of page 418, says:

"It has been held that a city and county sufficiently represents gas consumers within their territory as to justify, in a suit in which the former are made parties defendant, an injunction against the latter, although not formally joined."

Citing *S. F. Gas & El. Co. v. City and County of San Francisco*, 164 Fed. 884, 887.

Section 114 of Foster's Federal Practice, 5th edition, volume 1, says:

"When a number of persons have a common interest in a thing which is the subject of litigation, and, in some instances, when a number of persons have a common interest in a question which is before the court for decision, one or more may sue or be sued in behalf of the rest. Judge Story divides the first of these divisions into two: '(1) When the question is one of a common and general interest, and one or more sue or defend for the benefit of the whole; and (2) when the parties form a voluntary association for public or private purposes, and those who sue or defend may fairly be presumed to

represent the rights and interests of the whole. But there seem to be no reason for treating the two classes separately." * * *

"When the question is one of common or general interest to many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole."

See also Section 116, Foster's Federal Practice, 5th edition, volume 1.

Section 127 of the same work says:

"The rules upon the subject of parties are, however, very loose, and the questions arising under them are decided largely in the discretion of the court. 'The necessity for the relaxation of the rule is more especially apparent in the courts of the United States, where, oftentimes, the enforcement of the rule would oust them of their jurisdiction, and deprive parties entitled to the interposition of a court of equity of any remedy whatever.'" (Citing *Payne v. Hook*, 7 Wall. 425, 432.)

The rules of this court are to the same effect.

Equity Rule 37 says as follows:

"Every action shall be prosecuted in the name of the real party in interest, but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a *party expressly authorized by statute*, may sue in his own name without joining with him the party for whose benefit the action is brought."

Equity Rule 38 ~~is as follows:~~ — — —

"Representatives of class: "When the question is one of common or general interest to

many persons constituting a class so numerous as to make it impracticable to bring them all before the court, one or more may sue or defend for the whole."

AFFIDAVITS A PART OF THE RECORD.

Appellants herein, defendants in the court below, objected to the affidavits filed in connection with the petition for injunction. Objection might as well have been made to the petition as to the affidavits for it is necessary, when applying to any court of the United States for an injunction, to show the facts which will justify the court in granting relief. Proper rules of pleading, as we understand them, are to the effect that a petition or bill of complaint should set forth the ultimate facts, not evidenciary matter. The proper sphere of affidavits, in connection with an application for an injunction, is to set forth specifically the evidence of the ultimate facts contained in the petition. It is not the introduction of new matter or of the bringing in of new evidence; the affidavits are used to show to the court the precise facts of the case. The rules of this court require that the evidence warranting an injunction must be set forth either by *verified bill* or by *affivadit*. In the absence of an affidavit the verified bill is used as such.

Equity Rule 73 reads as follows:

"No preliminary injunction shall be granted without notice to the opposite party. Nor shall any temporary restraining order be granted

without notice to the opposite party, unless it shall clearly appear from specific facts, *shown by affidavit or by verified bill*, that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice." (Italics ours.)

Foster on Federal Practice, 5th edition, volume 1, sections 292 and 293, relative to applications for interlocutory injunctions, refers to the use of affidavits in such connection as a settled fact.

Section 334 of the above work says:

"An affidavit is a declaration upon oath or affirmation before some person having competent and lawful power and authority to administer the same. Affidavits are used in a suit in equity in three ways. In certain cases they must be annexed to a bill before it can be properly filed; certain documents may be proved by them at the hearing; *and they are used in support of interlocutory applications.*" (Italics ours.)

Defendants in the lower court, appellants here, made technical objections to the consideration of the affidavits, relying on the authority of the case of Louisville & Nashville R. R. Co. v. United States, 238 U. S. 1. This is referred to for the purpose of more clearly outlining our position. The case just mentioned was an appeal by the rail carriers from an order denying an interlocutory injunction. The matter of certain rates for the transportation of coal had been investigated by the Interstate Commerce Commission in a matter wherein the Louisville & Nashville Railroad Company and other car-

riers were parties and in which proceeding the Commission had found that certain rates were discriminatory. The carriers applied to the federal court for an injunction, which was denied; they then appealed to the Supreme Court. All matters relative to rates on coal and as to discrimination had been heard by the Commission. In the District Court the carriers sought to introduce additional evidence by affidavit and the only point decided by the Supreme Court was that such affidavit was not material under the contention of the rail carriers for the reason that they did not claim that the evidence did not sustain the findings of the Commission, but only claimed that the findings did not sustain the order. This is entirely different from the case at bar wherein the affidavits were introduced to show in detail the evidence sustaining the allegations of the petition as amended, filed in the lower court.

The point at issue in this case is that the Interstate Commerce Commission handed down orders which had not been applied for, and without the taking of evidence, in so far as Sacramento, Stockton, San Jose and Santa Clara were concerned; that the physical and industrial features of said communities were not considered; and that although the rates to the four cities mentioned had theretofore been reduced by reason of water competition, they were raised by order of the Commission without application, hearing or investigation and without changed conditions having taken place.

The respondents herein, petitioners below, were not parties to the hearing before the Interstate Commerce Commission and had no notice thereof. In fact, even had notice been given, the matters presented to the Commission did not affect their rights since the rates to said cities were not involved. A suit where an application for an injunction to restrain an order of the Commission is made upon the ground that the findings of the Commission are not supported by evidence in a matter directly applied for and to which the complainant was a party, presents an entirely different case from the one at bar. In this matter we demanded of the Interstate Commerce Commission a rehearing of the orders involved and the right to be heard and to submit evidence. We also protested against the tariffs filed by the rail carriers which increased the rates to the four cities. These protests and demands were denied. We were not parties to the proceedings before the Commission and were denied the right of a rehearing or the privilege of introducing evidence. It is of the lack of evidence that we complain—lack of evidence and lack of the right to produce evidence. If a party has his day in court and then appeals, a different situation might be presented. We, however, never had our day in court in so far as the Commission was concerned. These facts we have shown by our petition as amended and our affidavits.

Right to Hearing Denied by the Commission.

In the lower court the defendants, appellants here, argued that we were seeking an affirmative order.

Such, however, was incorrect; we sought only the suspension of the orders of the Commission in so far as the Commission exceeded its statutory authority and acted contrary to the Constitution of the United States.

At the hearing in the court below, appellants herein cited cases and quoted from decisions at length regarding matters which have no application. For instance, they relied on the case of *Proctor & Gamble v. U. S.*, 225 U. S. 282. That case laid down the principle, where a party had sought to have the Commission make an affirmative order granting him something which he had not theretofore enjoyed, that after the Interstate Commerce Commission had denied such party the privilege demanded, he could not apply to the courts to compel the awarding of the relief. The case merely held that the courts would not award some privilege which the Interstate Commerce Commission had refused. We most heartily agree with the principle laid down in the above case, but it has no application. We did not seek in this action to have the court award us an affirmative right denied by the Commission, but sought only to set aside in part the orders of the Commission which unlawfully took away from us certain rights to which we were justly entitled.

Sections 13 and 15 of the Act to Regulate Commerce have no application. The claim was made that we should have applied to the Commission for relief. We did apply to the Commission and the

fact cannot be denied. In the amendment to our petition, and in our affidavits as well, we specifically alleged that we applied to the Interstate Commerce Commission for relief as to the orders in question, and that the Commission denied us the right of a hearing. This fact is admitted.

We protested against the tariffs filed by the rail carriers and demanded, under the provisions of the Act to Regulate Commerce, that said tariffs be investigated and that the rail carriers be called upon to justify the increase of rates to the four complaining cities. Our protest and demand were ignored and denied.

Appellants further relied upon the case of *Texas & P. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, and similar cases, claiming that we had no right to appeal to the courts without first having made an application to the Commission. As before shown, we did apply to the Interstate Commerce Commission. But appellants have mistaken the issue in this case, for it was not against the rail carriers that our charge was primarily aimed, but at the orders of the Commission. In addition to the statutes before cited, Section 15 of the Act to Regulate Commerce says that orders of the Commission may be set aside by courts of competent jurisdiction. The Abilene case is good law but has no application. In that matter the rail carrier was sued for the recovery of money under the claim that the railroad had unreasonably exacted from the Abilene Company certain money on shipments of cotton seed,

the company claiming that the freight charges were unreasonable. This court merely said that the proper procedure was first to have the question as to the unreasonableness of the rates determined by the Commission. In the Abilene case there was no question raised as to the validity of any order of the Commission or as to the validity of the rates except that they were unreasonable. As we will hereafter show, the rail carriers primarily make rates, the Commission merely adjudging as to the reasonableness, discrimination or preference. As to the long-and-short-haul clause of the fourth section, the Act is mandatory except that it may be violated only when and in the manner prescribed by the statute.

The position taken by appellants is erroneous for two reasons, first—we did protest, complain and petition the Commission, everything that could have been done under Sections 13 and 15 of the Act, and second—the sections of the act just named do not cover the case at bar.

SECTIONS 13 AND 15 OF ACT NOT APPLICABLE.

Section 13 of the Act to Regulate Commerce contemplates only complaints for some act done or omitted to be done by a common carrier contrary to law. If the carriers impose unjust, unreasonable or discriminatory rates or restrictions upon certain persons or localities to their prejudice and disadvantage, they may complain to the Commission to have the evils corrected. The section comprehends acts

on the part of carriers which are unlawful under sections 1, 2 and 3 of the Act. Section 13 does not contemplate that a party should complain to the Commission of an act done by the Commission itself, for the statute and the laws of the United States give a party in such an instance the right to appeal to the courts to enjoin, set aside or cancel, in whole or in part, any orders of the Commission which are not in accord with law.

Section 13 further provides that the Interstate Commerce Commission may institute an inquiry *on its own motion* regarding matters referred to in Section 13, which contemplates unlawful acts on the part of the carriers. The statute then provides that the Commission must follow the same line of procedure as if a complaint had been made.

Section 15 of the Act provides for a *full hearing* as a jurisdictional necessity before any order of the Commission can be made. Section 15 begins as follows:

“That whenever, *after full hearing*, upon a complaint made as provided in Section 13 of this Act, or *after full hearing under an order for investigation* and hearing by the Commission on its own initiative, * * *” (Italics ours.)

An *order for a hearing* is required by the statute as well as the hearing. No order for such a hearing was made by the Commission of its own motion and no hearing without an order, was had. The statute does not contemplate that the Commission may simply make up its mind that it will change certain rates

and then justify them by saying that it had mentally considered the same. Such procedure would be depriving parties of property without due process of law.

A comparison of sections 13 and 15 of the Act to Regulate Commerce, with section 4 thereof, will readily show that the two former named sections have reference to complaints regarding acts on the part of common carriers wherein such common carriers have done or omitted to do something in contravention of the Act, such as where the carriers have imposed rates which are unjust, unreasonable, discriminatory, preferential or prejudicial. Sections 13 and 15 contemplate some act on the part of a common carrier initiated by itself. Section 4 of the Act commands that the rail carriers shall not charge more for a shorter haul than for a longer haul where the lesser is included within the greater except *upon application, in special cases, after investigation*, the carrier may be authorized by the Commission to violate this long-and-short-haul clause. Unless there has been the *application, investigation*, and the finding that a *special case* exists, the mandate of the statute prohibits any violation of its terms.

That portion of Section 4 of the Act reads:

“Provided, however, that *upon application* to the Interstate Commerce Commission such common carrier may in *special cases, after investigation*, be authorized by the Commission to charge less for the longer than for shorter distances for the transportation of passengers or property; and the Commission may from

time to time prescribe the extent to which such designated carrier may be relieved from the operation of this section." (Italics ours.)

The last portion of this proviso does not mean that the Commission may voluntarily, without application or hearing, make orders allowing carriers to violate provisions of the fourth section, but only that after there has been an application by a designated common carrier, and after investigation where a special case has been shown to exist, the Commission may make its order in that special case; and the matter therefore being before the Commission, it may thereafter modify the particular order. The Commission, however, has no rate making authority and its right to modify its orders can only be exercised after a hearing, with notice to all interested parties. To hold otherwise would be to say that the Commission might make any order which it deemed proper, without notice or hearing of any kind.

**Distinction Between Cases Arising Under Secs. 2
and 3, and Under Sec. 4.**

The second and third sections of the Act to Regulate Commerce deal with *unjust discrimination and undue or unreasonable preference or advantage*. Such things, from their very nature, are comparative. They arise by reason of Acts initiated by the carriers. It is the correction of such Acts that is contemplated in sections 13 and 15. If the carriers are collecting unreasonable rates or indulging in discriminatory practices, the Commission may, *after*

full hearing, upon complaint or motion and order for a hearing, correct the evil. Whether a certain rate is unreasonable or prejudicial or not presents a question of fact for determination by the Commission, and if after proper procedure and a full hearing the Commission makes an order based upon evidence its decree will not be set aside by the courts. There must, however, be evidence to sustain the order.

This is the argument of appellants, and the substance of all the decisions they have cited. We do not claim in such instances the courts will review the facts or consider the matter prior to a determination by the Commission. All cases cited by appellants, however, deal only with matters arising under sections 2 and 3 of the Act.

Section 4 of the Act is different. *It contains an absolute prohibition against charging more for a shorter than for a longer haul, the former being included in the latter, subject to modification only in the manner specified.* The provisions of section 4 are mandatory, those of sections 2 and 3 are comparative and require the determination of facts which will show the existence of the matters complained of.

United States v. Louisville & N. R. Co., 235
U. S. 314,

shows the distinction between the sections mentioned. In that case the Commission made an order under sections 2 and 3. The Supreme Court said

there should have been an application, hearing and order under section 4. At pages 326, 327, Chief Justice White says:

“It is true that in argument it was said that the question here is whether there was a preference or discrimination under the 2d and 3d sections of the act, and not an inquiry under the 4th section, and that a distinction between the various sections has been recognized. It has, indeed, been held that the provisions of the 2d, 3d, and 4th sections of the act, being *in pari materia*, required harmonious construction, and therefore they should not be applied so that one section destroyed the others, and consequently that a lesser charge for a longer than for a shorter distance permitted by the 4th section could not, for such reason, be held to be either a preference or discrimination under the 2d or 3d sections. *Louisville & N. R. Co. v. Behlmer*, 175 U. S. 648; *East Tennessee, V. & G. R. Co. v. Interstate Commerce Commission*, 181 U. S. 1. But the rule which requires that a practice which is permitted by one section should not be prohibited upon the theory that it is forbidden by another gives no support to the unwarranted assumption that that may be permitted which is devoid of all sanction, and indeed is in direct conflict with all three of the sections,—a result clearly arising in the case before us in consequence of the amendment of § 4. Indeed, when the evil which it may be assumed conduced to the adoption of the amendment of the 4th section and the remedy which that amendment was intended to make effective are taken into view, it would seem that the case before us cogently demonstrates the applicability of the amendment to the situation.”

We might well say that the orders of the Commission herein complained of are in conflict with all of said three sections.

The Commission may determine in the manner above stated whether or not certain rates are unreasonable or prejudicial under sections 2 and 3. Section 4 of the Act is *prohibitive and mandatory*, and allows but two exceptions, one referring to new cases arising after the amendment of June 18, 1910, where carriers may be granted the right to charge more for the shorter than for the longer haul *upon order of the Commission after application to and investigation by the Commission and the showing and finding that a special case exists*; the other to cases where tariffs violating this provision of the Act were lawfully in effect prior to the amendment of June 18, 1910, regarding which the fourth section, as amended, provides:

“That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the Commission, in accordance with the provisions of this section, until a determination of such application by the Commission.”

The rail carriers, after the passage of the above amendment, applied to the Commission for permission to *continue to charge the then existing rates* which were higher to *Intermountain points* than to the *California terminals*, but which were not higher

to Sacramento, Stockton, San Jose and Santa Clara than to San Francisco. No application has ever been made to violate the Fourth Section by charging higher rates to Sacramento and the other three cities than were charged to San Francisco, no hearing has ever been had, no evidence has ever been introduced. Therefore the section is mandatory that the four cities complaining shall not be charged higher rates than San Francisco.

**Application and Hearing Necessary to Validity
of Orders.**

The necessity for an application and a hearing under the Fourth Section, and the features which distinguish this section from sections 2 and 3, are clearly outlined in the above mentioned case of

United States v. Louisville & N. R. Co.,
235 U. S. 314.

We quote from the above case, beginning on page 321:

“While these conclusions demonstrate the error in the action of the court below, that result does not authorize us to reverse and give effect to the order of the Commission without going further, since it must be determined whether the action of the Commission was repugnant to the Constitution, in excess of the powers which that body possessed, or, what is equivalent thereto, was wholly unsustained by proof,—questions which the court below failed to pass upon because of the erroneous conception in which it indulged concerning its own powers. But if it were essential for us to consider these questions, we should be con-

fronted with a grave situation arising from the serious doubt which would exist whether it would be possible for us to do so in view of the manner in which the Commission had discharged its functions, *and whether that method had not, in and of itself, amounted to a denial of a hearing and thus resulted in want of due process of law.* See *Interstate Commerce Commission v. Louisville & N. R. Co.*, 227 U. S. 91, and the paragraph from the answer of the Commission, filed in the court below, which is in the margin.

"We pass this subject by, however, because its consideration is not essential to determine whether the Commission was right in prohibiting a continuance of the rebilling privilege, since we are of the opinion that even if the allowance of such rebilling privilege when originally made was authorized by the statute, and was therefore not a preference, *the right to continue it had been expressly prohibited by statute until, on application made to the Commission, its consent to that end was given.* The express or implied statutory recognition of the authority on the part of carriers to primarily determine for themselves the existence of substantially similar circumstances and conditions as a basis of charging a higher rate for a shorter than for a longer distance within the purview of the 4th section of the act to regulate commerce, and the right to make a rate accordingly, to continue in force until, on complaint, it was corrected in the manner pointed out by statute, ceased to exist after the adoption of the amendment to § 4 (24 Stat. at L. 380, chap. 104) by the act of June 18, 1910, chapter 309, 36 Stat. at L. 547, Comp. Stat. 1913, § 8566. This results from the fact that by the amendment in question the original power to determine the existence of the conditions justifying the greater charge for a shorter than was exacted for a

longer distance was taken from the carriers and primarily vested in the Interstate Commerce Commission, and for the purpose of making the prohibitions efficacious *it was enacted that after a time fixed no existing rate of the character provided for should continue in force unless the application to sanction it had been made and granted.* Intermountain Rate Cases (United States v. Atchison, T. & S. F. R. Co.), 234 U. S. 476. If, then, it be that the rebilling privilege which is here in question, disregarding immaterial considerations of form, and looking at the substance of things, was, when originally established, an exertion of the authority conferred or recognized by the 4th section of the act, *as there is no pretense that permission for its continuance had been applied for as required by the amendment, and the statutory period for which it could be lawfully continued without such permission had expired, it follows that its continued operation was manifestly unlawful,* and error was committed in permitting its continuance under the shelter of the injunction awarded by the court below." (Italics ours.)

It will be noted that the answer of the Interstate Commerce Commission, referred to in the foregoing case and set forth in the margin thereof, is practically identical with the contention of appellants herein. Appellants claim, as did the Commission in the other case, that the Interstate Commerce Commission, in arriving at its decisions and orders of January 29, 1915, and April 30, 1915, weighed and considered all the facts and arguments presented; that in forming its opinion and arriving at its conclusions it exercised its administrative functions and powers, considered all pertinent facts

and matters set forth in many reports and statistics on file, together with other facts coming to its knowledge in performance of its duties and functions prescribed pertaining to the matter involved; also the question of water competition at various points. A reference to the decision of the Supreme Court as to such an answer is sufficient, without further argument. (See Answer of Commission, Trans. bot. p. 82.)

Appellants have further argued that the carriers, by filing tariffs with the Commission, complied with the provisions of the Fourth Section. The tariffs complained of in this case were filed on less than the statutory notice of thirty days, and without compliance with the other requirements of section 6 of the Act to Regulate Commerce. Further, such tariffs were filed—not as voluntary acts on the part of the carriers, but—under previous orders of the Commission. It is these *orders* regarding which we complain. Appellants likewise claim a waiver on the part of the carriers, forgetting, however, that the Fourth Section is mandatory and that public interests and constitutional rights are involved which cannot be taken away without due process of law. All violations of the long and short haul clause are prohibited, except as allowed after due and legal proceedings to that end. Consent of the carriers is no excuse for the violation of Acts of Congress and no reason for depriving parties of property without due process of law, contrary to the Constitution of the United States.

Powers of Federal Courts to Set Aside Orders of Commission.

As to the powers and duties of the courts of the United States with respect to orders of the Interstate Commerce Commission, we can perhaps best state the same by quoting from the case of

I. C. C. v. Louisville & Nashville R. R. Co.,
227 U. S. 88.

"On the appeal here, the government insisted that while the act of 1887 to regulate commerce * * * made the orders of the Commission only prima facie correct, a different result followed from the provision in the Hepburn act of 1906, * * * that rates should be set aside if after a hearing the 'Commission shall be of the opinion that the charge was unreasonable'. In such case it insisted that the order based on such opinion is conclusive, and (though Interstate Commerce Commission v. Union P. R. Co., 222 U. S. 547, was to the contrary) could not be set aside, even if the finding was wholly without substantial evidence to support it.

"1. *But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, and at the same time imposed the duty of deciding in accordance with the facts proved. A finding without evidence is arbitrary and baseless. And if the government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice,*

and comes under the Constitution's condemnation of all arbitrary exercise of power.

"In the comparatively few cases in which such questions have arisen it has been distinctly recognized *that administrative orders, quasi judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence' (Citations) or if the facts found do not, as a matter of law, support the order made (Citations).*

"2. The government's claim is not only opposed to the ruling in *Interstate Commerce Commission v. Union P. R. Co.*, 222 U. S. 547, and the cases there cited, but is contrary to the terms of the act to regulate commerce, which in its present form provides * * * for methods of procedure before the Commission that 'conduce to justice.' The statute, instead of making its orders conclusive against a direct attack, expressly declares that they may 'be suspended or set aside by a court of competent jurisdiction.' * * * Of course, that can only be done in cases presenting a justiciable question. But whether the order deprives the carrier of a constitutional or statutory right, whether the hearing was adequate and fair, or whether for any reason the order is contrary to law,—are all matters within the scope of judicial power.

"3. Under the statute the carrier retains the primary right to make rates, but if, after hearing, they are shown to be unreasonable, the Commission may set them aside and require the substitution of just for unjust charges. The Commission's right to act depends upon the existence of this fact, and if there was no evidence to show that the rates were unreasonable there was no jurisdiction to make the order. *Interstate Commerce Commission v. Northern P. R. Co.*, 216 U. S. 544. In a case

like the present the courts will not review the Commission's conclusions of fact (*Interstate Commerce Commission v. Delaware, L. & W. R. Co.*, 220 U. S. 251) by passing upon the credibility of witnesses or conflicts in the testimony. But the legal effect of evidence is a question of law. *A finding without evidence is beyond the power of the Commission. An order based thereon is contrary to law, and must, in the language of the statute, be 'set aside by a court of competent jurisdiction.'* * * *

"4. The government further insists that the commerce act * * * requires the Commission to obtain information necessary to enable it to perform the duties and carry out the objects for which it was created; and having been given legislative power to make rates it can act, as could Congress, on such information, and therefore its findings must be presumed to have been supported by such information, even though not formally proved at the hearing. But such a construction would nullify the right to a hearing,—for manifestly there is no hearing when the party does not know what evidence is offered or considered, and is not given an opportunity to test, explain, or refute. The information gathered under the provisions of § 12 may be used as a basis for instituting prosecutions for violations of the law, and for many other purposes, but is not available, as such, in cases where the party is entitled to a hearing. The Commission is an administrative body and, even where it acts in a quasi judicial capacity, is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits between private parties. *Interstate Commerce Commission v. Baird*, 194 U. S. 25. But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the

Commissioners cannot act upon their own information, as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown, but presumptively sufficient information to support the finding. *United States v. Baltimore &c. R. R.*, 226 U. S. 14." (Italics ours.)

In the case of

I. C. C. v. Union Pac. R. R. Co., 222 U. S. 541, the decision very clearly sets forth the powers and duties of the courts. We quote from page 547:

"There has been no attempt to make an exhaustive statement of the principle involved, but in cases thus far decided, it has been settled that the orders of the Commission are final unless (1) beyond the power which it could constitutionally exercise; or (2) beyond its statutory power; or (3) based upon a mistake of law. But questions of fact may be involved in the determination of questions of law, so that an order, regular on its face, may be set aside if it appears that (4) the rate is so low as to be confiscatory and in violation of the constitutional prohibition against taking property without due process of law; or (5) if the Commission acted so arbitrarily and unjustly as to fix rates contrary to evidence, or without evidence to support it; or (6) if the authority therein involved

has been exercised in such an unreasonable manner as to cause it to be within the elementary rule that the substance, and not the shadow, determines the validity of the exercise of the power."

The case of

Ex parte Young, 209 U. S. 123,

sustains our contention that an injunction should issue under the showing which we have made that petitioners have been denied the equal protection of the law and that there is a confiscation of their property. As is stated at the bottom of page 148 of said decision, *various affidavits* were received upon the hearing before the court prior to the granting of the temporary injunction. We respectfully call the court's attention to the following cases which sustain our contention that under the facts presented the court has the right of judicial review.

See

Southern Pac. Co. v. I. C. C., 219 U. S. 433;
U. S. v. Baltimore & O. R. R. Co., 226 U. S.
14, 20;

State of Washington ex rel. O. R. & N. Co. v.
Fairchild, 224 U. S. 510.

In the case of

Missouri, K. & T. R. Co. v. I. C. C., 164 Fed.
645,

the powers and duties of courts with regard to orders of the Interstate Commerce Commission are quite fully set forth. We will quote from pages 648 and 649:

"Power to determine and prescribe what are just and reasonable maximum rates to be charged in interstate commerce is, in a limited way, conferred upon the Interstate Commerce Commission by existing statute law; but as the Commission acts only as a legislative or administrative board, and not judicially, its determination or actions does not, and cannot, preclude judicial inquiry into the justness and reasonableness of the rates, within the meaning of the constitutional guaranty, for that is a judicial question.

" * * * The statute under which the Interstate Commerce Commission derives its power to prescribe rates at all unequivocally recognizes, and, if there be need therefor, it plainly declares that the circuit courts, sitting in equity, are vested with jurisdiction to entertain, hear, and determine suits to compel obedience to the orders of the Commission prescribing rates (and also suits to annul or enjoin the enforcement of such orders. * * *

"It is not intended that the hearing in such a suit, whether it be of one kind or the other, shall be confined to an ascertainment of what was determined by the Commission and to a consideration of the sufficiency of the facts as determined by it to sustain the order; but on the contrary, *the hearing may be de novo, and may include the taking and consideration of evidence other than that before the Commission.*" (Italics ours.)

We claim that the order of the Commission increased freight rates to the four complaining cities—something neither applied for nor justified by the evidence. The case of

Texas & Pac. R. Co. v. I. C. C., 162 U. S. 197, was an action to compel the rail carriers to obey

an order of the Interstate Commerce Commission. An objection was raised to the order of the Commission on the ground that the Commission had authority only to inquire into matters pursuant to complaints made. In that connection the court said, beginning at the bottom of page 215:

“We do not wish to be understood as implying that it would be competent for the Commission, without a complaint made before it, and without a hearing, to subject common carriers to penalties. It is also obvious that if the Commission does have the power, of its own motion, to promulgate general decrees or orders which thereby become rules of action to common carriers, such exercise of power must be confined to the obvious purposes and directions of the statute. Congress has not seen fit to grant legislative powers to the Commission.”

On page 222 the court further says:

“The effort of the Commission, by a rigid general order, to deprive the inland consumers of the advantage of through rates, and to thus give an advantage to the traders and manufacturers of the large seaboard cities, seems to create the very mischief which it was one of the objects of the Act to remedy.”

After reviewing the various decisions, the court, beginning on page 233, says:

“The conclusions that we draw from the history and language of the act, and from the decisions of our own and the English courts, are mainly these: That the purpose of the act is to promote and facilitate commerce by the adoption of regulations to make charges for transportation just and reasonable, and to forbid undue and unreasonable preferences or dis-

criminations. That, in passing upon questions arising under the act, the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction, the tribunal may and should consider the legitimate interests as well of the carrying companies as of the traders and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment. That among the circumstances and conditions to be considered, as well in the case of traffic originating in foreign ports as in the case of traffic originating within the limits of the United States, competition that affects rates should be considered, and in deciding whether rates and charges made at a low rate to secure foreign freights which would otherwise go by other competitive routes are or are not undue and unjust, the fair interests of the carrier companies and the welfare of the community which is to receive and consume the commodities are to be considered. That if the Commission, instead of confining its action to redressing, on complaint made by some particular person, firm, corporation, or locality, some specific disregard by common carriers of provisions of the act, proposes to promulgate general orders which thereby become rules of action to the carrying companies, the spirit and letter of the act require that such orders should have in view the purpose of promoting and facilitating commerce, and the welfare of all to be affected, as well the carriers as the traders and consumers of the country.

"It may be said that it would be impossible for the Commission to frame a general order if it were necessary to enter upon so wide a field of investigation, and if all interests that are liable to be affected were to be considered. This criticism, if well founded, would go to show that such orders are instances of general legislation, requiring an exercise of the law-making power, and that the general orders made by the Commission in March, 1889, and January, 1891, instead of being regulations calculated to promote commerce and enforce the express provisions of the act, are themselves laws of wide import, destroying some branches of commerce that have long existed, and undertaking to change the laws and customs of transportation in the promotion of what is supposed to be public policy.

"This is manifest from the facts furnished us in the report and findings of the Commission, attached as an exhibit to the bill filed in the circuit court." (Italics ours.)

In *Philadelphia & R. Ry. Co. v. United States*, 240 U. S. 334,

the Supreme Court reversed the decree of the lower court in dismissing the original bill by the carrier to secure an annulment of an order of the Interstate Commerce Commission. The carrier contended on appeal that when considered in connection with its report, the Commission's order was plainly erroneous as a matter of law because wholly unsupported by the ascertained facts. The carrier contended that under the order of the Commission it would be unable to compete for business; a point which we have raised in this case. After reviewing the evidence the Supreme Court said:

"As the facts reported afford no foundation for the Commission's findings, enforcement of the order based thereon must be enjoined."

As to limitations on the powers of a state to exercise authority to regulate the rates to be charged by rail carriers, see

Northern Pac. Ry. Co. v. North Dakota Ex.

Rel. McCue, 236 U. S. 585;

Norfolk & W. Ry. Co. v. Conley, 236 U. S. 605.

The two foregoing cases are illustrative of the principle that the courts will review the evidence presented and will determine whether, as a matter of law, the facts found were sufficient to warrant the finding of the Commission or to prove the reasonableness of an act of the Legislature, and unless reason is shown for the action of the Commission or of the Legislature, it must be concluded that they acted in excess of their power.

In Louisville & N. R. Co. v. Finn, 235 U. S. 601,

at page 606, the court says:

"To deal first with the rate order. In cases arising under the interstate commerce act, the provisions of which contemplate an investigation or inquiry conducted with some formality, followed by a written report and decision as the basis of the orders, *it has been repeatedly held by this court that an administrative order made indisputably contrary to the evidence, or without any evidence, must be deemed to be arbitrary, and therefore subject to be set aside.* I. C. C. v. Union P. R. Co., 222 U. S. 541;

I. C. C. v. Louisville & N. R. Co., 227 U. S. 88. It is contended that the 'due process' provision of the 14th Amendment imposes a like rule of procedure upon the states with respect to their exercise of the legislative power of rate-making." (Italics ours.)

In Florida East Coast Ry. Co. v. United States, 234 U. S. 167,

the Supreme Court reversed the decree of the Commerce Court for not enjoining an order of the Interstate Commerce Commission. The court reviewed the evidence and said, beginning on page 185:

"While a finding of fact made by the Commission concerning a matter within the scope of the authority delegated to it is binding, and may not be re-examined in the courts, *it is undoubted that where it is contended that an order whose enforcement is resisted was rendered without any evidence whatever to support it, the consideration of such a question involves not an issue of fact, but one of law, which it is the duty of the courts to examine and decide.* Interstate Commerce Commission v. Louisville & N. R. Co., 227 U. S. 88, 91, 92, and cases cited.

"In view of what we have said concerning the state of the record, the solution of the question must depend upon an examination and analysis of two subjects: the one, the reports of the Commission in the previous cases, and the other, the testimony which was before it and the report made in this case. As to the first, in view of the statements made by the Commission in its report in the original case (No. 1168, 14 Inters. Com. Rep. 476) as to the earning power of the road, the nature of its busi-

ness, and the reasonableness of its rates, and the express finding that the citrus fruit and vegetable rates were just and reasonable and should not be changed, and the further fact that they were not called in question in the second proceeding, it follows that the inquiry narrows itself to the mere consideration of the testimony taken in this proceeding, and the report of the Commission in such proceeding, and the testimony taken before the court below in so far as it is proper to consider it in connection with the particular question under consideration. But, coming to make a review of the testimony before the Commission on the issue raised by the second supplemental petition, we fail to find the slightest proof tending to sustain the reduction in rates as to the East Coast Line, which was made." (Italics ours.)

In United States v. Louisiana & P. Ry. Co.,
234 U. S. 1,

involving "tap lines", the Commerce Court set aside an order of the Commission and its decree was affirmed by the Supreme Court. On page 28 this court, referring to the order of the Commission says:

"This order would of itself create a discrimination against proprietary owners, for lumber products are carried from this territory upon blanket rates applicable to all within its limits.
* * * The Commission, by the effect of its order, recognizes that railroads organized and operated as these tap lines are, if owned by others than those who own the timber and mills, would be entitled to be treated as common carriers and to participate in joint rates with other carriers. We think the Commission exceeded its authority when it condemned these

roads as a mere attempt to evade the law and to secure rebates and preferences for themselves."

As further explaining the distinction between a case where a party has the right to apply directly to the courts for relief and a case in which the jurisdiction is vested in the Interstate Commerce Commission, we refer to the case of

Pennsylvania R. Co. v. International Coal
Min. Co., 230 U. S. 184.

In this matter the rail carrier was sued direct for reparation. On the appeal it contended that the question of rates could be decided only by the Interstate Commerce Commission. Referring to the principles involved this court, especially on *page 196* of the report, said that the determination of the reasonableness or justness of rates involves a comparison of rate with service and calls for an exercise of the discretion of the administrative and rate-regulating body. That so far as the determination depends upon facts, no jurisdiction to pass upon the administrative questions had been conferred upon the courts; but, however, many cases arise in which those considerations do not appear and even if differences can be made in rates, none can be made except in the manner prescribed by statute.

Where an application has been made to the Interstate Commerce Commission for certain relief, the necessary evidence to justify the order of the Interstate Commerce Commission must be taken

before the Commission, otherwise the order must be set aside by the courts. The case of

Washington ex rel. O. R. & N. Co. v. Fairchild, 224 U. S. 510,

arose because the Attorney General of the State of Washington, at the direction of the Railroad Commission of that state, filed a complaint against the O. R. & N. Company to compel that common carrier to provide additional trackage and sidings. The Commission made such an order which was thereafter attacked. The order was set aside by the courts of Washington, and the judgment of said courts was affirmed by the Supreme Court of the United States. The purport of the above decision is that when a complaint is made to the Commission, sufficient evidence must be introduced before the Commission to justify its order, and if there is a failure of evidence, the order must be set aside. The court also says that the fact that the carriers did not produce their records before the Commission would not sustain the validity of the order. The principle of the law laid down is that the Commission cannot act except upon a complaint and that its order must be sustained by substantial evidence, irrespective of whether or not the carriers or others failed to appear and put in evidence even though they had the opportunity so to do.

The foregoing case was approved in

United States v. Baltimore & O. S. W. R. Co.,
226 U. S. 14.

On page 20 of the last mentioned decision, the court says:

"It is unnecessary to consider objections to the conclusion of the Commission that it was safe and reasonably practicable, etc., to establish the switch. We remark that *it is stated in the Commissioner's report that they based their conclusion more largely upon their own investigation than upon the testimony of the witnesses. It would be a very strong proposition to say that the parties were bound in the higher courts by a finding based upon specific investigations made in the case without notice to them.* (Citing *Washington ex rel. O. R. & N. Co. v. Fairchild*, 224 U. S. 510, 525.) Such an investigation is quite different from a view by a jury, taken with notice and subject to the order of a court, and different again from the question of the right of the Commission to take notice of results reached by it in other cases, when its doing so is made to appear in the record, and the facts thus noticed are specified, so that matters of law are saved." (Italics ours.)

COMMISSION CANNOT MAKE RATES.

The orders of the Commission herein complained of arbitrarily increased the freight rates to the four cities herein involved, both as to Schedule "B" and Schedule "C" commodities. As to Schedule "B" commodities, as shown by the application of the carriers and the report of the Commission, no relief was asked, no evidence was taken, and the subject was not considered. As to Schedule "C" commodities, the application was for a modifica-

tion of Fourth Section Order No. 124 and requested a greater degree of relief as to *Intermountain points* than had theretofore been granted. The effect of the orders of the Commission, and shown specifically by the tariffs filed pursuant thereto, actually *increased the freight rates to Sacramento and the other three cities as to both Schedule "B" and Schedule "C" commodities.*

Under the provisions of the amended fourth section, Sacramento and the other three cities could not be charged a higher rate than San Francisco. The Commission, however, without an application and without evidence, directed the carriers to violate the long and short haul provision of the fourth section, thus arbitrarily increasing and fixing the rate which the carriers were to charge to the four complaining cities. In

Cincinnati N. O. & P. T. Ry. Co. v. I. C. C.,
162 U. S. 184,

the above question is considered. We quote from the decision beginning at the lower end of page 196:

"Whether Congress intended to confer upon the Interstate Commerce Commission the power to itself fix rates was mooted in the courts below and is discussed in the briefs of counsel.

"We do not find any provision of the act that expressly or by necessary implication confers such a power.

"It is argued on behalf of the Commission that the power to pass upon the reasonableness of existing rates implies a right to prescribe rates. This is not necessarily so. The reasonableness of the rate, in a given case, depends

on the facts, and the function of the Commission is to consider these facts and give them their proper weight. If the Commission, instead of withholding judgment in such a matter until an issue shall be made and the facts found, itself fixes a rate, that rate is prejudged by the Commission to be reasonable.

"We prefer to adopt the view expressed by the late Justice Jackson, when circuit judge, in the case of *Interstate Commerce Commission v. Baltimore & O. R. Co.*, 43 Fed. Rep. 37, 3 Inters. Com. Rep. 92, and whose judgment was affirmed by this court, 145 U.S. 263 (36:699), Inters. Com. Rep. 92:

'Subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate, so as to give undue preference or advantage or subject to undue prejudice or disadvantage persons or traffic similarly circumstanced, the act to regulate commerce leaves common carriers as they were at common law, free to make special contracts looking to the increase of their business, to classify their traffic, to adjust and apportion their rates so as to meet the necessities of commerce, and generally to manage their important interests upon the same principles which are regarded as sound, and adopted in other trades and pursuits.' "

A further exposition of the power of the Commission in this regard is set forth in

Farmers' Loan & Trust Co. v. N. P. Ry. Co.,
83 Fed. 249.

Beginning on page 255 of the above decision, after quoting from the decision in 162 U.S. above mentioned, the court says:

"And not only has the Commission no power to fix maximum rates, neither has it any power to fix minimum, relative, or any rates. 'The Commission has no power to make rates, and especially has the Commission no power to order that rates from a given point to one city shall bear a certain relation to the rates from the same point to another city.' Ninth headnote, approved by the judge, *Interstate Commerce Commission v. Louisville & N. R. Co.*, 73 Fed. 409, 410, 428, 429. In *Interstate Commerce Commission v. Northeastern R. Co.*, 74 Fed. 70, 73, the court, after citing the *Social Circle Case*, says: 'The court can only enforce the lawful orders of the Commission. As has been seen, the Commission is not warranted by the Act of Congress to fix rates, and to this extent its order is not lawful. The bill (to enforce the orders of the Commission) is dismissed.' To the same effect is *Interstate Commerce Commission v. Alabama Midland Ry. Co.*, 21 C. C. A. 51, 74 Fed. 715, affirming 69 Fed. 227. In *Interstate Commerce Commission v. Lehigh Val. R. Co.*, 74 Fed. 784, 788, the court, after quoting with approval Justice Jackson's views adopted by the Supreme Court, says: 'These views of the Supreme Court decisively show that the Interstate Commerce Commission is not clothed with the power to fix rates which it undertook to exercise in this case. The petition of the Interstate Commerce Commission must be dismissed.' This was a sort of percentage case. The first headnote reads: 'The fact that the cost of carriage of all coal upon an entire railroad system, from all points of shipment to all destinations, is a certain per cent. of the gross receipts from all coal, is no reason for concluding that upon a particular line or part of the system the cost of carriage

bears the same ratio to the coal receipts of that particular line or part.'

"It follows from these decisions that the Interstate Commerce Commission cannot fix any rate absolutely or relatively, directly or indirectly, by a percentage on some other rate or otherwise, but must content itself with pronouncing a rate unjust or unreasonable, leaving the carrier to readjust its rates as often as required so to do. In the case at bar, if it were not for competition found, and found controlling, the Commission could have directed the respondents to cease charging a greater rate to Spokane than they might charge to the Pacific terminals on any kind of merchandise, but it should not have attempted to fix any rate, either absolutely or by reference to any other; for, as counsel for the petitioners suggests, 'that is certain which can be made certain,' and the Commission is not empowered to fix any certain rate. We think these cases a sufficient answer to the contentions of counsel for the petitioners under this head."

The foregoing principles have been approved by the Supreme Court in the following cases. See

I. C. C. v. Cincinnati, N. O. & T. P. Ry Co.,
167 U. S. 493, 500, 508, 509, 510, 511.

The case last cited concludes as follows, on page 511:

"Our conclusion, then, is that Congress has not conferred upon the Commission the legislative power of prescribing rates either maximum or minimum or absolute."

See also *I. C. C. v. Alabama Midland R. Co.*,
168 U. S. 144, 162.

We submit that the orders of the Interstate Commerce Commission herein complained of, do, in fact, fix rates and prescribe a maximum and a minimum as to the four complaining cities, contrary to the Act to regulate commerce.

BLANKET RATES IN EAST ALLOWED—PURPOSE THEREOF.

Attention is called to the position taken by the Commission in its findings of January 29, 1915, upon which its order of the same date was based, regarding the blanketing of rates to the Pacific Coast from all points from the Missouri River to the Atlantic seaboard, a strip of territory some fifteen hundred miles wide. What the Commission said in its decision is so pertinent to the present case that we will quote at length:

“We will next consider the allegation of the carriers that the low rates necessitated from Atlantic seaboard territory to the Pacific Coast can not be exceeded from Pittsburgh, Chicago, or the Missouri River territories, (1) because these territories are intermediate, (2) because traffic will not move therefrom to the Pacific Coast except on rates approximately equal to the rates made from the Atlantic seaboard. That provision of the fourth section of the Act which permits the carriers by application to seek relief from its requirements presupposes a condition that will lead the carriers to seek such relief. No such condition here

exists. *The carriers are not asking authority to make lower rates from the Atlantic seaboard than from intermediate points, for the very obvious reason that were the rates so adjusted the Pacific Coast would soon be supplying itself from the Atlantic seaboard with many of the articles which are at present shipped from the interior territory. By maintaining higher rates from the intermediate territory than from the Atlantic seaboard the railroads would concentrate a large part of the business on the Atlantic seaboard in territory contiguous to the sea. The carriers have therefore asked for no such relief.* Can it be said that their rates should be so made, and that they should be asking for such authority? What interest would be served by lower rates from the eastern seaboard to the Pacific Coast than from Chicago? Clearly not the carriers' interests. Any such adjustment of rates would be altogether adverse to the interests of the carriers and would almost inevitably result in their hauling much freight from the seaboard to the Pacific Coast which they now haul from intermediate points such as Chicago, a shorter distance, at a less expense. *The same policy would result also in serious injury to many of the industries located at interior points which have, under equal rates, built up a large and profitable business on the Pacific Coast.* Many articles are produced and manufactured both in the interior and on the Atlantic seaboard. Only a certain quantity of these manufactured articles can at present be consumed on the Pacific Coast. Any rate adjustment that tends to stimulate the movement of these articles from the Atlantic seaboard will to the same extent decrease the movement from Chicago and other intermediate points. The principal beneficiaries of such an adjustment of rates

would be the shippers on or near the Atlantic seaboard to whom would be given a monopoly of many articles in the markets of the Pacific Coast. *It is clear that the carriers' interest, and the interests of the major part of the public served, lie in the direction of the maintenance of rates from the intermediate points no higher than from the Atlantic Coast. The intent of the fourth section and the aim of the Commission in enforcing its provisions is to reduce discriminations, not to augment them. Discrimination of vast importance against intermediate points of origin would be created by the establishment of lower rates from the Atlantic seaboard to the Pacific Coast than from intermediate points.*" (See Trans. pp. 282, 283. Italics ours).

This blanketing of rates was allowed by the Commission to prevent the confiscation of flourishing industries which had been built up in the territory between the Missouri River and the Atlantic Coast and to prevent a monopoly, at or near the Atlantic seaboard, of commodities produced and shipped to the Pacific Coast. *Market competition* was recognized and sustained as a controlling factor.

The situation on the Pacific Coast is the same as that on the Atlantic, and the increase of rates to the four cities complaining herein is a confiscation of their industries which have been built up under long established equal rates. The orders of the Commission, in fact, augment discrimination. While we have no objection to blanketing the rates in the East, we claim that the Commission should not impose unjust rates upon us contrary to the views

which it has expressed. *The issue is that points of destination should be as much considered as points of origin.* In *Texas & P. Ry. Co. v. I. C. C.*, 162 U. S. 197, this court says:

“ * * * And in considering whether any particular locality is subjected to an undue preference or disadvantage, the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment.”

LAST PARAGRAPH OF FOURTH SECTION PROHIBITS INCREASE OF RATES TO FOUR COMPLAINING CITIES.

The Interstate Commerce Commission, in the Intermountain Cases, recognized the fact of water competition at the various California Terminals, including Sacramento, Stockton, San Jose and Santa Clara. The fourth section of the Act, as amended, contains this provision:

“Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to and from competitive points, it shall not be permitted to increase such rates unless *after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.*” (Italics ours).

The above provision of the Act contemplates a *hearing* and the necessity of a finding that changed

conditions other than the elimination of water competition exist. It is shown by our petition as amended and by our affidavits that the rail carriers extended terminal rates to Sacramento, Stockton, San Jose and Santa Clara by reason of water competition and have from time to time lowered such rates by reason of such water competition, the lowering of such rates having continued to take place since June 18, 1910.

The only point made by appellants is that the water carriers plying between the Atlantic and Pacific seacoast now quote dock to dock rates, having discontinued the absorption of the local haul by barge, bay craft, river boats and the like so as not to bring themselves under the jurisdiction of the Interstate Commerce Commission. These water carriers, however, did very materially lower their rates, and water competition, in fact, now exists at the four cities—Sacramento, Stockton, San Jose and Santa Clara—in a more marked degree than it did before. San Jose and Santa Clara, for instance, by barge or bay craft and motor truck can land goods in San Jose, Santa Clara and the surrounding communities at \$1.00 per ton, delivered direct to the door of the consumer. This is as cheap as delivery can be made from the dock in San Francisco to the warehouse of the manufacturer or jobber. The same situation prevails at Sacramento and Stockton. These four cities are within the zone of water influence as much now as they ever were. Counsel for appellants have argued strenuously that zones

were proper and that the Commission should designate zones where the same competitive influences were felt. The four cities involved herein are in the same zone of influence as San Francisco and Oakland and are entitled to the same consideration.

It must be remembered that Sacramento, Stockton, San Jose and Santa Clara can be reached from San Francisco by an all water route and without recourse to rail transportation. In early days, as we have shown in our affidavits, ocean going vessels actually transported goods from the Atlantic seaboard direct to these cities. Later, the method of water transportation was for the ocean carriers from the East to trans-ship commodities by bay or river boats to the points of destination and this method has been in vogue for many years. The local water rates from San Francisco to all of the four cities are much lower than the respective rail rates. In fact, the local water rate to San Jose is very little more than the transfer by boat from San Francisco across to Oakland, with the additional benefit to San Jose of not being forced to pay an extra drayage charge.

If a city can receive commodities from the East by an all water route, it is in a different situation from an interior city which can only receive goods by rail. It is the low water rate which forces the decrease in rates on the part of the rail carriers. If the local back haul from San Francisco must be by rail, such carriers naturally receive a benefit

from such traffic, but if the goods are shipped by an all water route, the rail carriers derive no benefit therefrom. These points, we claim, emphasize the idea of the zone of water competition to which we have before referred and which includes the four complaining cities.

It is the unit of charge by water which forces the rail carriers to extend terminal rates to various points and the circumstances and conditions surrounding all four complaining cities are the same as surround San Francisco and Oakland. All four cities are within a zone of water influence which acts upon one practically the same as it acts upon all others. We therefore claim that there have been no changed conditions.

The fourth section of the Act provides that there must be changed conditions other than the elimination of water competition. We submit that there are no changed conditions, but even if the discontinuance of the absorption of the local back haul by the water carriers was an elimination of water competition, there are no changed conditions other than such elimination. Appellants refer to the Panama Canal as a changed condition. The opening of the Canal could have resulted in no more than increasing water competition, not the changing of conditions or the eliminating such competition. We might refer to the present physical condition of the Canal, and to the war, the well known effects of which are within the common knowledge of all.

They are matters outside of the record, yet even though they might be considered, the only effect they could have would be as to the degree of water competition.

Appellants have contended that the amendment to the fourth section of June 18, 1910, referred only to reductions in rates subsequent to that date. This argument is erroneous for two reasons, first—because the rail carriers have made reductions since June 18, 1910, because of water competition, and, second—that such a narrow construction of the Act would destroy its purpose. The amendment referred to was inserted in the statute to show the policy of Congress, to-wit, that various communities and industries built up under rates granted them by the rail carriers because of water competition, acquired certain inchoate rights which public policy would not allow the rail carriers thereafter to destroy.

Water competition does not spring up over night; it is of gradual development and must grow and continue before it can have the effect of reducing rates by rail. It cannot be said that Congress meant that if a reduction took place one day prior to June 18, 1910, the amendment would not apply, whereas if the reduction was one day later the statute would be operative. The settled principle as to the construction of statutes is that an amendment is to be construed as though it had been incorporated in the original Act and as a part thereof; the provisions of both are to be harmonized and if

possible, no clause of either is to be left inoperative. The old law must be considered, the mischiefs, inconveniences or hardships produced by it; and then the remedy proposed by the amendatory law. As we have shown, the carriers, since June 18, 1910, continued the former rates to the four cities involved which was in effect a renewal of the decreases in rates, but in addition to that they also further decreased said rates by reason of water competition, as will be shown by some seventy-five to one hundred tariffs and supplements filed since that date. These facts bring the carriers directly within the purview of the amendment.

Further, the amended fourth section has not been complied with. *The amendment contemplates an application by the carriers for an increase of the rates and a hearing by the Commission.* In the absence of such an application and hearing, any increase in rates ordered by the Commission would be an arbitrary exercise of a rate-making power. The purpose of said amendment was to protect communities and such an exercise of power by the Commission would be to deprive such communities of property without due process of law. No application filed by the carriers involved in this matter, in fact, no application by anyone at any time, ever asked permission to increase the rates to Sacramento, Stockton, San Jose and Santa Clara. We submit that the orders of the Commission increasing such rates were prohibited by the direct provisions of the amended fourth section.

Effect of Decision of District Court.

Appellants have an erroneous conception of the issue in the case at bar. Our sole contention is that the orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, were beyond its statutory authority for the reasons we have hereinbefore stated. This action is not brought under sections 2 or 3 of the Act regarding reasonableness of rates, nor preferences, nor discriminations, but under the fourth section which prescribes and limits the powers of the Commission.

Appellants argue that the decision of the District Court is, in effect, that applications to the Commission for relief must be granted *in toto* or denied *in toto*. Such is not the effect of the decision; it merely enjoins the enforcement of the order in so far as it was given without authority. The rail carriers applied to the Commission for permission to continue charging the same rates to Intermountain points which they had charged prior to the amendment of June 18, 1910. We do not dispute the authority of the Commission to say to the carriers that the relief requested was too great and that anything in excess of some lesser relief would not be justified. That is what the Commission actually did by Fourth Section Order No. 124 wherein it granted the carriers a part of the relief as to Intermountain points as prayed for.

No relief was asked regarding terminal points and such a matter was not considered. The rail car-

riers, by their applications and tariffs, plainly said that no relief was asked as to Sacramento, Stockton, San Jose and Santa Clara and no relief was granted. Subsequently, without an application therefor, or hearing, or evidence, the Commission ordered the carriers to increase the rates to the four cities involved, contrary to the provisions of the amended fourth section. As to the balance of the order we have no concern, but in so far as the order was beyond the statutory authority of the Commission it should be set aside. This cancellation, in part, of the orders of the Commission could work no hardship, or increase, or cause any discrimination, as to any intermediate points in California. All intermediate points pay in addition to the terminal rate the local back haul from the nearest terminal. The rates to intermediate points cannot be increased nor can discrimination result. As to Nevada points, as we have before shown, the rates thereto from San Francisco are no higher than the rates from the four complaining cities, so that the situation as to Nevada or intermountain territory could not be affected. Furthermore, the rates charged to Nevada points can exceed the terminal rate only to the extent of the percentages named in the order, and this excess is much less than the local back-haul charge from either San Francisco or Sacramento. Therefore the decision of the District Court could not possibly affect the rate situation as to Nevada points.

Appellants contend that the rail carriers must charge the rates contained in their tariffs. Such a contention would mean that no matter how illegal an order of the Commission might be and no matter how unjust might be a tariff ordered to be filed by the Commission, shippers could secure no relief from the courts because of the fact of a tariff being on file. Such contention would give the Commission a power not possessed by any department of this government. The amended fourth section prohibits a violation of the long-and-short-haul clause, and tariffs violating this section are, on their face, illegal. The argument of appellants is that a tariff having been filed, the rail carriers must collect the rates mentioned therein even though the tariff, on its face, shows that it is without sanction of law or justice.

No chaos can result from the decree of the District Court for the only thing necessary to be done is for the carriers to obey such decree and apply the San Francisco rate to the four cities mentioned. The original petition in this cause was filed before the effective date of the tariffs and due notice was given to all parties concerned of the contentions of the respondents herein. If we have no right of action such as the statute says we have, then the Commission can make any arbitrary order which it may desire, refuse to consider any protest as it did in this case, and then say to us that we have no relief.

It is immaterial in this case whether or not we had notice of the application filed by the carriers

for additional relief under Fourth Section Order No. 124, for such application did not ask for any violation of the amended fourth section as to the four cities involved. The hearing of that matter was had in Chicago on October 6, 1914, and was concluded before any matters involving San Jose were determined by the Commission. In ordinary cases the statute provides that the carriers shall file and post their tariffs and give thirty days' notice before they can become effective. (See section 6 of the Act to Regulate Commerce.) The tariffs complained of herein were filed under order of the Commission without the posting and notices as prescribed. Following this, our protests and demands were ignored; we were therefore forced to institute an action in the District Court for we had been denied the right to a hearing by the Commission.

CONCLUSION.

We again state that appellants have misconceived the purpose of the present action and the effect of the decision of the District Court.

Petitioners below, respondents herein, under the right given them by Acts of Congress, filed their petition to set aside and enjoin, in part, the orders of the Interstate Commerce Commission. The grounds upon which this petition was based were:

(1) Lack of statutory authority on the part of the Commission to make the orders. The particulars wherein this lack of power is shown are:

(a) No application, no hearing, no evidence.

(b) The orders were contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States, being without due process of law.

This case arises under the amended fourth section which contains two prohibitions:

(1) The long and short haul clause shall not be violated.

(2) Rates reduced by reason of water competition shall not be increased except in the manner and under the conditions specified.

As was said in the

Intermountain Rate Cases, 234 U. S. 476, 485:

"Power in the carrier primarily to meet competitive conditions in any point of view by charging a lesser rate for a longer than for a shorter haul has ceased to exist, because to do so, in the absence of some authority, would not only be inimical to the provision of the 4th section, but would be in conflict with the preference and discrimination clauses of the 2d and 3d sections. * * * And as a correlative the authority of the Commission to grant on request the right sought is made by the statute to depend upon the facts established and the judgment of that body, in the exercise of a sound legal discretion, as to whether the request should be granted compatibly with a due consideration of the private and public interests concerned, and in view of the preference and discrimination clauses of the 2d and 3d sections."

As was said by this court in

United States v. Louisville & N. R. Co., 235
U. S. 314, 326:

"But the rule which requires that a practice which is permitted by one section should not be prohibited upon the theory that it is forbidden by another gives no support to the unwarranted assumption that that may be permitted which is devoid of all sanction, and indeed is in direct conflict with all three of the sections. * * *"

Our claim is that the orders of the Commission, although primarily void in so far as the provisions of the fourth section are violated with reference to Sacramento, Stockton, San Jose and Santa Clara, further have no sanction under either sections 2 or 3 of the Act.

We have in our petition at length, and to an extent in this brief, referred to matters arising under the 2nd and 3rd sections of the Act, this for the purpose of showing that contrary to the decision in the Intermountain Rate Cases, the Commission did not consider such matters. Again, the effect of the decision by the Commission in the Intermountain Cases was that the rates to the coast terminals were reasonable; if so, any increase in rates to the four complaining cities would be unjustified, and there has been an increase in rates to these four cities, both as to Schedule "B" and Schedule "C" commodities, but especially as to the former.

There has never been an application filed wherein it was sought to increase the rates to Sacramento and the other three cities or to impose upon them a greater charge than to San Francisco, contrary to the long and short haul clause of the fourth section. No hearing was had on this subject and no evidence taken, yet the orders of the Commission committed both of the offenses just mentioned against the four cities.

In addition to the foregoing, the increase in rates on Schedule "B" commodities was ordered by the Commission contrary to the express wording of the application of the carriers.

The original applications of the carriers were to continue the rates which existed prior to the amendment to the fourth section and had reference only to Intermountain points. In so far as Sacramento and the other three cities were concerned, no right to violate the fourth section was requested. That order become final, as far as the Commission was concerned, June 22, 1911—Fourth Section Order No. 124. Under this order the four cities herein involved retained the same rates, under the provisions of the fourth section, as did San Francisco, and no authority was granted, none having been applied for, to charge a higher rate to Sacramento or the other three cities than to San Francisco. The application of the carriers to modify this order asked for relief only as to Schedule "C" commodities with reference to Intermountain points, Schedule "A" and Schedule "B" commod-

ities not being considered. The carriers did not ask permission to charge higher rates to Sacramento or the other three cities than were charged to San Francisco. Nevertheless, the orders of the Commission directly told the carriers to charge higher rates to the four complaining cities than were imposed on traffic destined to San Francisco, and this as to Schedule "B" commodities regarding which the carriers had specifically stated they did not desire relief.

As to Schedule "C" commodities the Commission directed the carriers to make a further application. This the carriers did and the application, in effect, was that the four complaining cities should retain their old rates since the carriers gave these four cities from a 7c to 10c per hundred pound lesser rate than was charged to San Francisco, which would have covered the back haul charge. The Commission in its decision, upon which the order of April 30, 1915, was based, recognizes that the application of the carriers did not ask for an increase to the four complaining cities. Nevertheless, the Commission, without application or authority of law, directed the carriers to increase the rates to these four cities, as to Schedule "C" commodities, to the extent of seventy-five per cent of the back-haul charge.

Our rates have been increased without justification. Section 15 of the Act to Regulate Commerce, so strongly relied upon by appellants, provides as follows:

“At any hearing involving a rate increased after January first, Nineteen Hundred and Ten, or of a rate sought to be increased after the passage of this act, *the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier.* * * *” (Italics ours.)

We protested against this increase and demanded a hearing. We met only with denials. The increase of rates is contrary to the very provisions of the Act relied upon by appellants.

We find this result—the Commission, without application, hearing, or evidence, arbitrarily increased the freight rates to Sacramento, Stockton, San Jose and Santa Clara, usurped a rate-making power whereas its province is regulation, violated the mandate of the amended fourth section, ignored the provisions of sections 2, 3 and 15, denied our protests and demands for a hearing, and now claim that the courts cannot interfere.

We submit that the decision of the District Court should be affirmed.

Dated, San Francisco,

October 7, 1916.

Respectfully submitted,

JOHN E. ALEXANDER,

Counsel for all Appellees.

UNITED STATES OF AMERICA, INTERSTATE
COMMERCE COMMISSION, ATCHISON, TO-
PEKA & SANTA FE RAILWAY COMPANY, ET
AL. *v.* MERCHANTS & MANUFACTURERS TRAF-
FIC ASSOCIATION OF SACRAMENTO ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF CALIFORNIA.

No. 452. Argued October 19, 1916.—Decided December 4, 1916.

Appellant carriers made applications to the Interstate Commerce Commission, under § 4 of the Act to Regulate Commerce, as amended by the Act of June 18, 1910, c. 309, 36 Stat. 539, 547, for authority to continue existing tariffs (and, more generally, to continue an existing method) whereby rates were made lower for certain ports and inland cities than for certain places less distant from points of origin.

Held, that, in passing on such applications, the Commission was empowered, while granting the relief as asked in respect of the ports, to grant it in a less degree only in respect of the inland cities, thus making a distinction between them and the ports not made by the tariffs or sought for in the applications.

The power of the Commission, under § 4 of the Act to Regulate Commerce, as amended June 18, 1910, is not limited to granting or denying *in toto* the precise relief applied for by a carrier; but whenever, following such an application, the Commission has considered the special circumstances affecting the particular carrier in its relations to that section, it may exercise a broad administrative discretion in determining from time to time the relief which such carrier should receive.

Quare, whether application by the carrier is a prerequisite to the granting of relief under § 4 as amended.

In a proceeding under § 4, as amended, the Commission represents the public and the carrier is the only necessary party; interested communities and shippers, though customarily heard, need not be notified, and, at least in the absence of participation, are not bound.

Such shippers or communities as deem themselves injured by dis-

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Argument for Appellees.

crimination or unreasonable rates in tariffs filed pursuant to orders made by the Commission under amended § 4 have their remedy, not in applying for a rehearing of the proceedings in which such orders were made, but by direct applications to the Commission for relief under §§ 13 and 15.

That part of amended § 4 which provides that when rates have been reduced in competition with water routes they shall not be increased unless, upon hearing, the Commission finds a reason in changes of conditions other than the elimination of water competition, has no application to a case in which the complaint is based not on increase but on difference of rates; in which the elimination of water competition is denied by the parties complaining; and in which the change complained of was part of a general readjustment of transcontinental rates made necessary by increase of water competition and authorized by the Commission after prolonged hearings.

231 Fed. Rep. 292, reversed.

THE case is stated in the opinion.

Mr. Assistant Attorney General Underwood for the United States.

Mr. Joseph W. Folk for the Interstate Commerce Commission.

Mr. John E. Alexander for appellees:

The orders complained of and the tariffs filed thereunder operated, first, to increase freight rates to and from Sacramento, Stockton, San Jose and Santa Clara, and second, to remove those cities from the list of "California Terminals" and classify them as "intermediates." The increase in rates was unjustified; and depriving the four cities of the benefit of terminal rates was unreasonable and discriminated against them in favor of San Francisco and Oakland.

The carriers had petitioned, not to change rates, but to continue the then method of rate-making under which

these four cities were given the same rates as the ports. The only point at issue was whether higher rates could be charged to intermountain points. The last plan submitted by the carriers before the final order of the Commission was, in effect, a request that the terminal situation be not changed, and the Commission so regarded it. The Commission, however, adopted a new scheme without taking evidence and without any corresponding application before it. The resulting tariffs increased the rates of the complaining cities as above stated. Their protests and demands for rehearing were denied. Thus they were deprived of valuable interests without due process of law.

The "long and short haul" clause of § 4 of the act, as amended, is mandatory, except in special cases where a particular carrier presents a specific application for relief and after investigation the Commission finds that a special case exists. The proviso does not mean that the Commission may of its own motion, without application or hearing, make orders of exemption. It may only enter an order in a special case, though afterwards, the matter thus being before it, it may modify that particular order. It has, however, no rate-making authority, and may modify its orders only after hearing with notice to all interested parties.

Respondents were entitled to such a hearing under § 4. *United States v. Louis. & Nash. R. R. Co.*, 235 U. S. 314, 321.

Sections 13 and 15 have no application. The former contemplates only complaints for acts done or omitted by the carrier, as where their rates are unreasonable or discriminatory as regards certain persons or localities—such acts as are unlawful under §§ 1, 2 and 3. In such cases the party injured may complain to the Commission, but where the complaint respects a wrongful act done by the Commission itself, the remedy lies with the courts.

The District Court had jurisdiction to grant the relief both independently and by derivation from the Commerce Court. Judicial Code, § 207, par. 2; *id.*, § 208; Act of October 22, 1913, c. 32, 38 Stat. 208, 219. This court has repeatedly held that where orders of the Commission exceed its authority, are not preceded by fair hearing, are erroneous in law or contrary to the indisputable evidence, they may be set aside by the federal courts.

Filing tariffs as directed by the orders did not constitute compliance with § 4. It is the orders themselves that are complained of. Besides having been filed on less than 30 days' notice, and without complying in other respects with § 6, these tariffs were not the voluntary acts of the carriers. They could not amount to a waiver of that which § 4 requires for the protection of public and private rights.

The last paragraph of § 4, as amended, prohibits this increase of rates. Lowering of rail rates because of water competition took place both before and after June 18, 1910. There are no "changed conditions" other than the elimination of such competition. The complaining cities are within the influence of water competition as much now as ever, and quite in the same manner as the port cities. The amendment of June 18, 1910, was meant to evince the policy of Congress that communities and industries built up, as these were, under rates granted by rail carriers because of water competition, should be deemed to have acquired inchoate rights which such carriers might not thereafter destroy.

The decree merely enjoins the enforcement of the order in so far as it was made without authority. It works no hardship or discrimination against intermediate points in California or Nevada. No confusion can follow; the only effect is that the carriers must apply the San Francisco rate to the four cities mentioned.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

By the Act of June 18, 1910, c. 309, 36 Stat. 539, 547, amending § 4 of the Act to Regulate Commerce, carriers were prohibited from charging more "for a shorter than for a longer distance over the same line or route in the same direction" without obtaining authority from the Interstate Commerce Commission so to do. A period of six months from the passage of the amendment was provided within which carriers might file application for authority to continue charges of that nature then lawfully existing.

For many years prior to 1910 it had been a common practice to make freight rates from the East to Pacific coast points lower than to intermountain territory, because of competition by the Atlantic-Pacific Ocean carriers. About 185 interior cities near the coast had been granted the same transcontinental rates as the ports of San Francisco and Oakland, because the competing water carriers customarily "absorbed" the local rates or charges from the ports to those cities. Among the interior cities thus treated as "Pacific Coast Terminals" were Sacramento, Stockton, San Jose and Santa Clara. The extent to which the higher rates to intermountain territory were justified and the proper basis for "back haul" rates had been the subject of many hearings before the Interstate Commerce Commission.

Proceeding under § 4 as amended, six railroads applied to the Commission under date of December 7, 1910, for relief in respect to westbound transcontinental commodity rates. The applications, after enumerating the then existing tariffs, sought authority specifically "to continue all rates shown in the above-named tariffs from eastern shipping points designated to Pacific coast terminal points" and generally "to continue the present method of

making rates lower at the more distant points than at the intermediate points, such lower rates being necessary by reason of competition of various water carriers" from Atlantic to Pacific ports. After prolonged hearings the Commission entered its so-called Fourth Section Order No. 124, by which, while declining to grant the applications as made, it authorized charging, in some respects, lower rates for the longer hauls. The limitation of such charges was set by a zone system and rate percentage basis prescribed by the Commission, which involved an extensive readjustment of rates; but the existing practice of treating these interior cities as terminals was not disturbed. The validity of the order was attacked by the carriers in the courts and after three years of litigation, finally sustained in *Intermountain Rate Cases*, 234 U. S. 476.

Meanwhile the "effective date" of the order had been extended by the Commission. After the decision of this court, further extensions of the "effective date" were sought by the carriers and granted. Some modifications of the order were proposed by the carriers. Additional hearings were had in which many shippers participated. Changes in conditions occurring since the entry of the original order on July 31, 1911, were considered—among others, that Congress had passed the Act of August 24, 1912, giving the Commission jurisdiction over transportation "by rail and water through the Panama Canal"; that the Canal itself had been opened on August 15, 1914; that competing ocean rates had been lowered and service improved; and that the ocean carriers had discontinued the practice of "absorbing" rates from the ports to interior cities. An elaborate supplemental report was made by the Commission on January 29, 1915, and another on April 30, 1915. The propriety of modifications in addition to those proposed by the carriers was shown and a new plan for constructing "back haul" rates, devel-

oped by the Commission, was eventually embodied in the Amended Fourth Section Order No. 124 of April 30th, 1915, and adopted by the carriers in the tariffs filed thereunder. Following the limitation imposed by the amended order, the tariffs filed confined the low "Terminal" rates to ports of call like San Francisco and Oakland; and the interior coast cities including Sacramento, Stockton, San Jose and Santa Clara, were subjected to rates materially higher than San Francisco and Oakland, though much lower than those to intermountain territory.

Representatives of these four cities, conceiving them aggrieved by the refusal to grant them the same rates as the ports and alleging that they had participated in whole or in part at hearings which preceded the entry of the last amendment order, applied to the Commission for a rehearing and when their application was denied, brought this suit in the District Court to restrain the enforcement as to them of the amended order, and of the tariffs filed thereunder. The City of Santa Clara and associations representing the traffic interests of Sacramento, Stockton and San Jose joined as plaintiffs. The United States, the Interstate Commerce Commission and the six railroads were made defendants. The bill alleged, among other things, that these cities had for a number of years enjoyed the same rates as San Francisco and Oakland; that large industries and other businesses had been established there because they enjoyed terminal rates; that their commercial importance and prosperity would be ruined if the rates were withdrawn; that no changed conditions existed justifying a withdrawal of terminal rates; that they had not been parties to the proceedings in which the orders were made; and that the "orders authorizing the withdrawal of terminal rates" from them were, among other things, "discriminatory and unjust, were made without said cities having their day in court or without giving them an opportunity to show the unreasonableness thereof, that

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Opinion of the Court.

no justification for such increase was shown, and the order of April 30, 1915, was without evidence, that petitioners have been denied the equal protection of the law and deprived of property without due process of law, to their irreparable damage."

The case was heard before three judges; and a final decree was entered which declared that the "orders of the Interstate Commerce Commission of January 29, 1915, and April 30, 1915, in Fourth Section Applications Nos. 205, 342, 343, 344, 350 and 352," in so far as they authorize the carriers to charge for the transportation of westbound transcontinental freight destined to Sacramento, Stockton, San Jose and Santa Clara, California, "any greater amount than is concurrently charged for the like carriage of like freight to San Francisco and Oakland, California, were beyond the statutory powers of the Interstate Commerce Commission, and the enforcement thereof should be enjoined; and said orders in the particulars above mentioned are hereby canceled and set aside." The decree also enjoined and canceled to like extent the tariffs filed in pursuance of such orders. The District Court rested its decision that the Commission had no statutory power to enter the amended order upon the ground, that an order authorizing higher rates to these interior cities could not legally be entered unless there was an "application" to it by the carriers for that specific purpose and "a hearing upon that particular application as in a special case"; that there had been no such application and hearing and that consequently the orders were void and the tariffs filed in pursuance thereof illegal. *Merchants & Manufacturers Traffic Ass'n et al. v. United States et al.*, 231 Fed. Rep. 292.

The appeal, in which all the defendants joined, raises important questions involved in the administration of the Fourth Section as amended June 18, 1910, namely:

First: Is it essential to the validity of an order au-

thorizing a lower rate for a longer haul, that it be based upon an application asking only the precise relief granted?

Second: What is the remedy of a community or shipper which deems itself aggrieved by the order made?

The orders here in controversy were confessedly based upon applications made by the carriers. Both the amended orders and the decree recite by numbers the applications dated December 7, 1910. The objection made by the appellees is that the limited authority granted by the Commission had not been applied for; since the carriers asked specifically for leave to continue lower rates, which were the same for ports and for interior California cities, but the Commission permitted these rates to ports while it denied like rates to the interior cities. Respondents deny that the District Court holds in effect that applications for relief must be granted *in toto* or denied *in toto*; but such is the necessary effect of its decision. Amended § 4 empowers the Commission "upon application" to authorize a carrier "to charge less for longer than for shorter distances." These carriers asked leave, among other things, to charge on westbound transcontinental freight to about 193 coast and interior cities much less than to intermountain territory. The Commission permitted them to charge, to eight of these cities which were ports, *as much less* as the applications requested; but as to the other 185, which were interior cities, including the four complaining here, permitted the carriers to charge only *somewhat less*. In other words, the Commission granted a part of the relief asked. The District Court says it had no power so to do. But there is nothing in the act to justify limiting the power of the Commission to either a grant or a denial *in toto* of the precise relief applied for. Such a construction would make § 4 unworkable and defeat the purpose of the amendment. It is at variance with the broad discretion vested in the Com-

mission and the prevailing practice of administrative bodies. It fails to give effect to the provision that "the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section." It is inconsistent with *Intermountain Rate Cases*, 234 U. S. 476, where the order sustained granted relief very different from that applied for; and it finds no support in *United States v. Louisville & Nashville Railroad*, 235 U. S. 314, 322, cited by the District Court, in which case relief from the operation of the Fourth Section had not been granted. The clause in Amended Fourth Section which declares "That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances" was designed to guard against the issue, by the Commission, of general orders suspending the long and short haul clause and to ensure action by it separately in respect to particular carriers and only after consideration of the special circumstances existing. Whenever such consideration has been given—"the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section."

It may be doubted whether application by the carrier is a prerequisite to the granting of relief. As was said in *Intermountain Rate Cases*, 234 U. S. 476, 485, § 4 vests in the Commission the "primary instead of a reviewing function" to determine the propriety of a lesser rate for a longer distance; and § 13 declares that the Commission "shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had

excepting orders for the payment of money." Unless formal application be an indispensable prerequisite to the exercise by the Commission of the power granted by the Fourth Section, its absence or a defect in it could be waived; and it would be waived by the filing of tariffs under the order entered. For the order is permissive merely. The carrier is the only necessary party to the proceeding under § 4. The Commission represents the public. While it is proper and customary for communities or shippers interested to participate in hearings held, there is no provision for notice to them. They are not bound by the order entered; at least in the absence of such participation. And if the rates made by tariffs filed under the authority granted seem to them unreasonable, or unjustly discriminatory, §§ 13 and 15 afford ample remedy. Respondents contend that, after the amended order was entered and the tariffs filed, they did apply to the Commission for relief "but were denied the right of a hearing" and that "their protest and demand were ignored and denied." What they did was to petition for a "rehearing" in the proceedings under the Fourth Section, to which they now say they were not parties, instead of applying for redress under § 13, as they had a legal right to do. They mistook their remedy. To permit communities or shippers to seek redress for such grievances in the courts would invade and often nullify the administrative authority vested in the Commission; and, as this case illustrates, the attempt of the court to remove some alleged unjust discriminations might result in creating infinitely more. The decree of the District Court cancels the amended order and the tariff only so far as it concerns the four complaining cities and thereby discriminates perhaps most unjustly in their favor as against the other 181 interior cities.

It was also contended on behalf of the four cities that the amended orders violated the clause added to § 4 by

the Act of June 18, 1910, which provides that "Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition." The answers to this contention are many. What these four cities complain of is not increase of rates but the fact that San Francisco and Oakland may be given rates lower than theirs; and they strongly deny that water competition has been eliminated. Indeed, it was the increased effectiveness of water competition due to the opening of the Panama Canal—a notable change in conditions—which compelled the rate readjustment of which they complain; and the higher rates to the interior cities made under authority of the Commission were granted after prolonged hearings as part of the general readjustment of trans-continental rates. The provision relied upon has no application to such a case.

The decree of the District Court must be reversed with directions to dismiss the bill.

Reversed.